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HOMELAND SECURITY

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UNITED STATES DEPARTMENT OF HOMELAND SECURITY

THURSDAY, MAY 29, 2014

HOUSE OF REPRESENTATIVES
COMMITTEE ON THE JUDICIARY
Washington, DC.

The Committee met, pursuant to call, at 10:33 a.m., in room 2141, Rayburn House Office Building, the Honorable Bob Goodlatte (Chairman of the Committee) presiding.

Present: Representatives Goodlatte, Coble, Smith of Texas, Chabot, Bachus, Forbes, King, Franks, Gohmert, Jordan, Poe, Chaffetz, Marino, Gowdy, Labrador, Farenthold, Holding, Collins, DeSantis, Smith of Missouri, Conyers, Nadler, Scott, Lofgren, Jackson Lee, Johnson, Pierluisi, Chu, Deutch, Gutierrez, DelBene, Garcia, Jeffries, and Cicilline.

Staff Present: (Majority) Shelley Husband, Chief of Staff & General Counsel; Branden Ritchie, Deputy Chief of Staff & Chief Counsel; Allison Halataei, Parliamentarian & General Counsel; Kelsey Deterding, Clerk; George Fishman, Counsel; Andrea Loving, Counsel; Dimple Shah, Counsel; (Minority) Perry Apfelbaum, Staff Director & Chief Counsel, Danielle Brown, Parliamentarian; Tom Jawetz, Counsel; and David Shahoulian, Counsel.

Mr. GOODLATTE. The Judiciary Committee will come to order. Without objection, the Chair is authorized to declare recesses of the Committee at any time.

We welcome everyone to this morning's oversight hearing on the U.S. Department of Homeland Security. And I will begin by recognizing myself for an opening statement.

I want to extend our welcome to Secretary Johnson for testifying before us today for the first time.

The Obama Administration has taken unprecedented and most likely unconstitutional steps in order to shut down the enforcement of our immigration laws for millions of unlawful and criminal aliens not considered high enough "priorities."

The DHS does this under the guise of prosecutorial discretion. The beneficiaries include many thousands of aliens who have been arrested by State and local law enforcement or are convicted criminals who have been put in removal proceedings and who DHS simply has let back onto our streets.

In addition to simply not pursuing removable aliens, the DHS has been granting hundreds of thousands of them administrative legalization and work authorization.

The Department of Homeland Security does this under many guises, invoking doctrines with esoteric names, such as Deferred Action and Parole in Place.

The net effect of these policies has been described by former ICE Acting Director John Sandweg: “If you are a run-of-the-mill immigrant here illegally, your odds of getting deported are close to zero.”

Over the past few years, ICE has been claiming to have removed record numbers of unlawful or criminal aliens from the United States.

Of course, to the extent these numbers are valid, they would have simply reflected the vast increase in enforcement resources provided by Congress in recent years.

ICE’s budget has increased from approximately 3 billion in 2005 to 5.8 billion in 2013. However, ICE’s removal numbers simply rely on smoke and mirrors.

In fact, almost two-thirds of the removals claimed by ICE in 2013 involved aliens apprehended by the Border Patrol along the border or intercepted by inspectors at ports of entry.

When we look at the number of true ICE removals of aliens residing in the United States, we see that they have fallen 43 percent from 2008 to 2013. Even President Obama has admitted that ICE’s record removals are deceptive.

Removals are down so dramatically because the Obama Administration is twisting the concept of prosecutorial discretion beyond all constitutional recognition, all in an unprecedented effort to create immigration enforcement-free zones.

Most disturbingly, despite the Administration’s pledge to prioritize the removal of serious criminal aliens, DHS is releasing thousands of such aliens onto our streets.

The Judiciary Committee discovered through subpoena that, between October 2008 and July 2011, the Department of Homeland Security declined to seek removal for almost 160,000 aliens who had been arrested by State and local law enforcement officers.

After these aliens were then released into our communities, about 17 percent were rearrested on criminal charges within only 3 years’ time.

The crimes charged include nearly 8,500 DUIs, over 6,000 drug violations, and more than 4,000 major criminal offenses, including murder, assault, battery, rape, and kidnapping.

In one of the most horrific cases, an unlawful alien DHS decided not to pursue after being arrested for attempted grand theft was later arrested on suspicion of killing a man, chasing those who had robbed his 68-year-old grandfather.

These crimes never would have been committed had DHS pursued these aliens for removal. Unfortunately, none of this has shamed the DHS into changing its irresponsible practices.

The Center for Immigration Studies recently obtained ICE documents revealing that, in 2013, ICE declined to pursue removal thousands of times against convicted criminals it had encountered.

And ICE also discovered that, in 2013, ICE released from detention over 36,000 convicted criminal aliens that it had actually put in removal proceedings.

I have asked DHS for identifying information on these released criminal aliens so that we may determine what new crimes they have gone on to commit.

I hope and expect that Secretary Johnson will fully cooperate in providing this vital information to the Committee and the American people.

The end result of DHS's practices is that the American people have lost all confidence in this Administration's willingness to enforce our current immigration laws or use any enhanced enforcement tools that Congress may give it.

This, in turn, has made it exceedingly difficult for Congress to fix our broken immigration system. Unfortunately, we can only expect DHS's efforts to evade its immigration law enforcement responsibilities to escalate.

President Obama has asked Secretary Johnson to perform an inventory of the Department's current enforcement practices to see how it can conduct them more humanely.

These are simply code words for further ratcheting down enforcement of our immigration laws. We do not know yet how far Secretary Johnson will go.

Persons within and without the Administration have pressured him to no longer seek to remove previously deported aliens who have illegally reentered the United States or aliens who have absconded from their removal proceedings and become fugitives.

Some have demanded that DHS grant administrative legalization to parents who endanger their children's lives by bringing them here illegally in perilous journeys.

Others have gone so far as to demand administrative legalization for the entire universe of millions of unlawful aliens who would receive a special pathway to citizenship under the Senate's massive comprehensive immigration bill.

Secretary Johnson is not responsible for the dangerous and irresponsible decisions made by DHS before he was sworn in last December. We can only hope that he will bring back a level of adult responsibility to the enforcement of our immigration laws.

But his recent comments that he is considering scaling back one of the DHS's most successful programs to identify and remove dangerous aliens, Secure Communities, cause me grave concern for the future of immigration enforcement. I look forward to the testimony of Secretary Johnson today.

It is now my pleasure to recognize the Ranking Member of the Committee, the gentleman from Michigan, Mr. Conyers, for his opening statement.

Mr. CONYERS. Thank you, Chairman Goodlatte, and Members of the Committee.

We all join in welcoming you, Secretary Johnson, to the House Judiciary Committee as Secretary, and long before you had a distinguished career both in public service and in the private sector.

But the thing that I like most about it is that you are a Morehouse College graduate, and that has a special resonance for many in the Congress and in our communities.

Before your appointment to the Department of Homeland Security, Secretary Johnson served as general counsel of the Depart-

ment of Defense where he oversaw many critical reforms, including ending the discriminatory policy “Don’t Ask, Don’t Tell.”

Given this background, I can think of no person better equipped to lead the Department of Homeland Security and carry out the President’s directive to review our immigration policies to ensure that we are carrying them out in the most humane way possible.

Yesterday the President of the United States announced a delay to this review to provide my House colleagues the room they need to pass legislative reforms, whether through the Senate bill or several House bills, and I am committed to work with them to achieve needed reforms of our system.

Most of us agree that the system is broken and that only Congress can permanently fix it. So the Secretary’s testimony and opinions here today will be very important to us all.

We should get started on that process right away before the window for reform closes. Every day that passes without a vote in the House is a day that thousands of families are torn apart, that businesses are deprived of critical skills and that brilliant entrepreneurs and investors are forced to take their resources and talents elsewhere. Every day that passes is also a day in which we fail to jump-start our own economy.

The Congressional Budget Office has concluded that the House and Senate immigration reform bills, S. 744 and H.R. 15, would decrease the budget deficit by \$900 billion over a 20-year period. So I stand committed to work with my colleagues for legislative reform.

But if my colleagues won’t act to fix a system that most agree needs it badly, then I fully support the President doing what he can under the current law to improve that system.

I agree with the President’s call to make our immigration system reflect American values. People who commit serious crimes and pose a danger to the public should be our highest priorities for removal.

Those with strong ties to this country, the spouses of citizens and permanent residents, the parents of citizens and dreamers, and those who have worked productively in the United States for many years should not be.

We know the Administration has the authority to set enforcement priorities, and it also has the authority to set detailed guidelines to ensure that those priorities are carried out by deportation officers, trial attorneys, and other enforcement personnel.

This authority has been specifically recognized by my colleagues on both sides of the aisle of this Committee, including a letter sent by current Members to the Clinton Administration urging it to issue guidelines on prosecutorial discretion.

So far, we have heard hardly more than excuses for not doing immigration reform: The Senate bill has too many pages; the House wants to take its time and do reform step by step; we must secure the border before we can discuss anything else.

Well, I think the newest excuse for not working to reform the system is that the Republicans cannot trust the President to enforce the law.

Put aside the fact that this Administration has set records with respect to enforcement spending, detentions, prosecutions, and re-

movals, but “can’t trust the President” excuse strikes me as an extremely odd complaint from a legislative body.

What is the point of passing any bill if we have that kind of an impasse? How many other issues of national importance do my colleagues think Congress should ignore until they have someone else that they might prefer in the White House?

It is time to cut out the excuses and get to work doing the people’s business. Americans agree the system is broke, and they strongly support comprehensive immigration reform. And so it is our duty to stop passing the buck and get to work.

Mr. Chairman, I thank you for the time, and I yield back.

Mr. GOODLATTE. Thank you, Mr. Conyers.

And, without objection, all other Members’ opening statements will be made a part of the record.

We thank our only witness, the Secretary, for joining us today.

Secretary Johnson, if you would please rise, I will begin by swearing you in.

[Witness sworn.]

Secretary JOHNSON. I do.

Mr. GOODLATTE. Thank you.

Let the record reflect that the Secretary responded in the affirmative. And it is now my pleasure to introduce him.

Jeh Charles Johnson was sworn in on December 23, 2013, as the fourth Secretary of Homeland Security. Prior to joining DHS, Secretary Johnson served as general counsel for the Department of Defense where he was part of the senior management team and led more than 10,000 military and civilian lawyers across the Department.

Secretary Johnson was general counsel of the Department of the Air Force from 1998 to 2001, and he served as an Assistant U.S. Attorney for the Southern District of New York from 1989 to 1991.

In private law practice, Secretary Johnson was a partner with the New York City-based law firm Paul, Weiss, Riffkind, Wharton & Garrison.

Secretary Johnson graduated from Morehouse College in 1979 and received his law degree from Columbia Law School in 1982.

The Secretary reminded me this morning that he has a connection to this Committee as well that many Members will find of interest. In the early 1990’s, he worked briefly for then-House Republican Ranking Member of the Judiciary Committee, Ham Fish of New York.

Secretary JOHNSON. It was actually the 1970’s, Congressman.

Mr. GOODLATTE. Oh. 1970’s. Well, that is way before my time.

But I thank you for that information as well as the information that many Members of the Committee may find of interest, that there are 10,000 military and civilian lawyers in the Department of Defense. Whether that is a good thing or a bad thing we will leave for future discussion.

In any event, we look forward to your testimony. Your written statement will be entered into the record in its entirety.

And we ask that you summarize your testimony in 5 minutes. To help you stay within that time, there is a timing light on your table and, when the light switches from green to yellow, you will have

1 minute to conclude your testimony. And we welcome you to the Committee.

TESTIMONY OF THE HONORABLE JEH C. JOHNSON, SECRETARY, UNITED STATES DEPARTMENT OF HOMELAND SECURITY

Secretary JOHNSON. Thank you, Chairman.

You do have my prepared written statement.

Let me just summarize a couple of things within my 5 minutes. First, thank you for inviting me. I look forward to our discussion this morning and this afternoon.

I begin by pointing out that, as the leader of the Department of Homeland Security, I recognize that our most valuable asset is our men and women, and I have pledged numerous times to support them in good times and in bad times.

My first full week on the job I went to South Texas to attend the funeral of CBP Officer Darrell Windhaus, who died in the line of duty in South Texas.

Yesterday we lost another one, Border Patrol Agent Alexander Giannini, age 24, who died in the line of duty in what appeared to be a one-car accident in Arizona. And I am sure that the Members of this Committee join me in mourning his loss and expressing condolences to his family.

Thank you for the opportunity to be here. As I mentioned, I know a number of Members of this Committee from other contexts, from the House Armed Services Committee, from private life, and it is good to see you.

Let me begin by saying that, in my judgment, counterterrorism must remain and should continue to remain the cornerstone of the mission of the Department of Homeland Security.

As the President mentioned yesterday at West Point, core Al Qaeda has been largely decimated, but in the last several years, we have seen the rise of Al Qaeda affiliates, Al Qaeda adherents, and other Al Qaeda-like organizations around the world.

We have to be vigilant in regard to those organizations. We are concerned, I am concerned, about the so-called lone wolf who would attack us in this country, domestic-based independent actors who commit or attempt to commit terrorist acts, as evidenced last year by the Boston Marathon bombing.

We in the Department of Homeland Security need to be vigilant against all these potential threats, and I believe we are.

I believe it is also particularly important, given the decentralized and diffuse nature of the terrorist threat that the homeland faces, that we spend a lot of time and effort working closely with State and local law enforcement, first responders through training, through working together and JTTFs and so forth, preparedness grants.

We have an initiative that I am personally involved in and particularly interested in, countering violent extremism at home through engagements in local communities.

I believe it is important, where possible, that we push out our homeland security beyond our borders where we can do so consistent with agreements with other governments.

I believe it is important that we establish in as many places as feasible preclearance capabilities in overseas airports that are last points of departure.

In terms of border security, we have devoted an unprecedented amount of resources. Thanks to the support of this Congress to that effort, over the last number of years apprehensions have gone down, but we have seen a rise recently in apprehensions, particularly in the Rio Grande Valley sector in South Texas.

We are seeing a rise that we have to address and we must address and I am developing a plan to address, in particular, with regard to illegal migration by those other than Mexicans coming from Central America and unaccompanied children.

The problem of unaccompanied children is one that I am very familiar with, having personally visited McAllen Station, Texas, several weekends ago to see the problem myself.

I have directed a number of actions in response to that situation which I would be happy to discuss further with Members of the Committee. We are developing a campaign plan for the southwest border, which represents a whole of DHS approach.

You are correct, Chairman, that I am engaged in a review of reforms to our enforcement priorities. And the President has asked me to wait, for reasons that I agree, before announcing those reforms to give the House of Representatives the opportunity this summer to act on comprehensive immigration reform.

It is something that I very much support and believe in for a number of reasons, including added border security, mandatory E-Verify, enhanced criminal penalties for those who would hire undocumented, as well as the earned path to citizenship. And both the President and I urge the House of Representatives to act.

We are doing a number of other things, which I would be happy to discuss in more detail, in the Department to enhance morale, to enhance our process for budget deliberations and our acquisition process.

And we are making great progress in filling the numerous senior-level vacancies. Including myself, since December, the Senate has confirmed seven presidential appointments for senior leadership positions in DHS.

I believe it is critical to the morale and good work of the Agency that we have a new energy, new leadership in the department, and we are making good progress there.

Thank you, Chairman. And I look forward to your questions.

[The prepared statement of Secretary Johnson follows:]



The Honorable Jeh C. Johnson
Secretary
U.S. Department of Homeland Security

Testimony

Before the
Committee on the Judiciary
U.S. House of Representatives

May 29, 2014

Statement of Secretary of Homeland Security Jeh Charles Johnson
Committee on the Judiciary
U.S. House of Representatives
May 29, 2014

Chairman Goodlatte, Ranking Member Conyers, and Members of this Committee, thank you for the opportunity to testify today.

The cornerstone of our mission at the Department of Homeland Security has been, and should continue to be, counterterrorism – that is, protecting the nation against terrorist attacks. As a New Yorker who was present in Manhattan on 9/11, it is what most motivates my public service. We must remain vigilant in detecting and preventing future terrorist threats that may seek to penetrate the homeland from the land, sea or air.

While many of the leaders of core al-Qaeda (as we knew it after 9/11) are dead or captured, the terrorist threat has evolved, and still persists. Since about 2009, we have seen the rise of al-Qaeda affiliates, such as al-Qaeda in the Arabian Peninsula. AQAP, in particular, has made repeated efforts to export terrorism to our homeland, and it remains active.

We also face threats from those who self-radicalize to violence, the so-called “lone wolf,” domestic-based, who did not train at an al-Qaeda camp overseas or become part of an enemy force, but who may be inspired by radical, violent ideology to do harm to Americans – illustrated last year by the Boston Marathon bombing. This is the type of threat that may be hardest to detect. It involves independent actors potentially living in the United States, with easy access to items that, in the wrong hands, can become tools for mass violence.

To counter the potential for violent extremism at home, I am committed to seeing DHS continue to build strong relationships with state and local law enforcement throughout the country. We continue to provide training to law enforcement, community and private sector partners to counter violent extremism and active shooter threats. We have studied and shared information with these partners regarding violent extremism, including the factors that may influence extremist activities as well as potential indicators. We also continue to encourage public participation in our efforts through campaigns such as “If You See Something, Say Something,” which promotes the reporting of suspicious activity to the authorities.

Homeland security depends on security along our borders and at ports of entry. At our borders and ports of entry, we must deny entry to terrorists, drug traffickers, human traffickers, transnational criminal organizations, and other threats to national security and public safety while continuing to facilitate legal travel and trade.

We appreciate the support Congress has provided to improve security at our borders and ports of entry. With that support, we have made great progress. There are now increased personnel, technology, and infrastructure on our borders, more than ever before, and our men and women in and around the border are producing results.

But we must remain vigilant in response to the latest trends and challenges to border security. We are concerned and closely monitoring a substantial increase in the numbers of unaccompanied children, who are some of the most vulnerable individuals who interact with our immigration system. We are working closely with the Department of Health and Human Services (HHS), which is the agency with jurisdiction over unaccompanied children and to whom DHS is mandated by law to transfer these children.

I have been closely following this emerging issue since coming into office, with a particular focus on the Rio Grande Valley. On Sunday, May 11th, I traveled to McAllen, Texas to view the situation and saw the children there first hand – an overwhelming number of whom were under twelve years old. I have taken steps across the Department and in coordination with federal partners to immediately address this issue. These efforts build on several years of increased and strengthened coordination.

Since taking office, I also have been focused on the issue of use of force by our agents and officers in the field. In my view, transparency is essential to the credibility of a law enforcement agency within the communities it operates. In March, both CBP and ICE delivered on a commitment I made in January and publicly released their use-of-force policies. The Department also publicly released, for the first time, the Department-wide use-of-force policy. And CBP has provided further guidance to the Border Patrol workforce to lessen the likelihood of incidents involving deadly force.

As we work to increase border security, however, we must continue to look beyond our borders. We are actively engaging our international partners to identify and interdict threats at the earliest possible point, before they reach our borders. We are sharing more information with these partners; we are working in a joint capacity to counter transnational criminal organizations, human and drug smugglers, and those who traffic in persons; and we are building greater security and integrity into our shared systems of trade and travel.

We can't sit along our land and maritime borders and play "goal line defense" — we must, where possible and appropriate, engage with our foreign and interagency partners to extend our homeland security beyond our borders and address threats as far from the homeland as possible. This is why I believe pre-clearance by CBP in foreign airports before passengers board a flight bound for the U.S., is a homeland security imperative. There are currently 16 foreign airports with last points of departure in the United States with preclearance operations, including most recently, Abu Dhabi. With the support of the government of the United Arab Emirates, in January we established a pre-clearance capability at the airport in Abu Dhabi. I sent a team of DHS officials to Europe last week to engage with our partners there to establish this capability at more overseas airports that are last points of departure to the United States.

Within the last several months we have issued advisories to airlines about evolving threats to aviation security and modified the TSA's screening procedures at last-point-of-departure international airports. TSA issues these advisories whenever necessary, based on the latest intelligence and information. We are, and have been, vigilant in checking the INTERPOL database for passports reported lost or stolen, to prevent someone with a passport that is not his or her own from boarding a flight to or from the United States.

Any international airport that has a direct flight to the United States must abide by strict U.S. security measures, which include appropriate verification of all travel documents. Since 2008, prior to departure, CBP vets all travelers for inbound and outbound flights to and from the United States, as well as any flight that travels through U.S. airspace, through the Advanced Passenger Information System and against INTERPOL databases, and does a thorough review of all relevant domestic and international criminal databases, for any issues of concern, including reports of stolen documents.

I have directed the development of a Southern Border and Approaches Campaign Planning effort that is putting together a strategic framework to further enhance security of our Southern border. Plan development will be guided by specific outcomes and quantifiable targets for border security, approved by me, and will address improved information sharing, continued enhancement and integration of sensors, and unified command and control structures as appropriate. The overall planning effort will also include a subset of campaign plans focused on addressing challenges within specific geographic areas.

Immigration enforcement is also critical to homeland security. ICE continues to focus on sensible, effective immigration enforcement that prioritizes the removal of national security and public safety threats, and those apprehended at the border while attempting to unlawfully enter the United States.

As I'm sure you know, on March 13 of this year, the White House shared that President Obama directed me to review our deportation policies, to see if removals can be conducted in a more humane manner. To accomplish this, I have sought advice and input from my team within DHS, including the very people that enforce our immigration laws on a daily basis. As I continue my review, I welcome the ideas of various stakeholders and Members of Congress from both sides of the aisle who bring to the discussion a diverse set of views. This review is ongoing.

Whatever we do to revise our enforcement policies, however, is no substitute for comprehensive immigration reform passed by Congress. Last year, the Senate passed a reform bill that would increase our border and port security, more effectively discourage employers from hiring undocumented workers, better enable employers to hire documented workers to meet labor needs, remove obstacles to family reunification, improve our ability to attract and retain highly-skilled immigrants by creating additional avenues for entrepreneurs and foreign students who graduate with advanced STEM degrees, and provide an earned path to citizenship for the estimated 11.4 million undocumented immigrants in this country, many of whom have been here for years.

This bill passed the Senate by a bipartisan vote of 68-32, is supported by President Obama, Democrats and Republicans, the business and labor communities, law enforcement and religious leaders, and, according to polls, the majority of the American people.

The estimated 11.4 million undocumented immigrants living in this country are not going away. They are not going to "self-deport." As a matter of homeland security, we should encourage these people to come out of the shadows of American society, pay taxes and fines, be held

accountable, and be given the opportunity to get on a path to citizenship like others. What we are talking about is not amnesty, or rewarding people for breaking the law; it is an opportunity to actually get right with the law and get in line behind others. It is far preferable to what we have now.

Meanwhile, I am committed to enforcing our immigration laws in manner that best promotes and ensures national security, public safety and border security. I am aware of the reports that in Fiscal Year 2013 thousands of individuals with criminal convictions who may be removable were released from custody. I have asked for a deeper understanding of this issue. Many of these releases were directed by immigration judges or pursuant to legal requirements, and/or with conditions of supervision intended to ensure their monitoring and appearance. Nevertheless, I intend to work with ICE leadership to determine whether we are doing everything we can to maximize public safety.

Finally, I am committed to addressing the various management issues facing the Department of Homeland Security.

For example, as part of a broader Unity of Effort initiative I have directed, we will ensure that the Department continues to invest and operate in a cohesive, unified fashion, and makes decisions that build true unity of effort across our components. This initiative will allow us to continue to build DHS into an organization that is greater than the sum of its parts – one that operates more collaboratively, is able to leverage shared strengths and take advantage of shared efficiencies, and is a more effective partner at every level.

With the White House and Congress, we are focused on filling the vacancies that exist at the senior levels of the Department. I am pleased that, since December, the Senate has confirmed seven new leaders for DHS, including myself. We are continuing to recruit and vet terrific candidates to fill the remaining vacancies, and I hope the Senate will act quickly to confirm our nominees.

Morale has been low within various components of the Department. Morale depends in very large measure on good leadership, and by filling the senior level vacancies, I believe we will inject a new energy into the Department. Deputy Secretary Mayorkas and I also have formed a Steering Committee to identify issues impacting morale and develop discrete plans to address those issues, including the hiring and promotion process, training and professional development, rewards and recognition for employees, performance management, and employee communications. Two weeks ago I presided at the first of our Secretary's "Act of Valor" awards programs, to acknowledge DHS personnel who commit acts of valor on or off duty.

I believe homeland security is the most important mission any government can provide to its people. In the pursuit of this important mission, I pledge to this Committee my total dedication and all the energy I possess. Thank you for listening and I look forward to your questions.

Mr. GOODLATTE. Thank you, Secretary Johnson.

We will now proceed under the 5-minute rule with questions. And I will begin by recognizing myself.

Secretary Johnson, I appreciate the President's recognition of the importance of doing immigration reform. I and, I think, most Members of Congress believe we need to do immigration reform as well.

But it needs to be recognized by the President and by you and others in the Administration that, when the President says that he is going to set a time limit and then consider taking actions himself, which many of us read to be the President again repeating, "I have a pen and a cell phone and, if you don't act, I will," that that makes doing immigration reform harder, not easier, because those who may like what the President decides to do administratively have less reason to negotiate the hard decisions to be made about how to enforce our immigration laws in the future.

And those who do not agree with the President's position on immigration reform say, "Why should we negotiate if we can't trust the President to enforce the laws as they exist."

So I just expressed to you my ongoing concern that the President is being helpful to the process when he works with the Congress and suggests that he wants to accomplish immigration reform, but he hurts the efforts in the Congress when he says, "If you don't do it" and the suggestion is further, "If you don't do it my way, I will act unilaterally," when many of us believe the United States Constitution does not give him the authority to do that.

But let me turn my questions to another subject, and that is there are now 858,779 non-detained aliens with final orders of removal who have not been removed. The vast majority of these aliens have simply absconded and become fugitives in the U.S.

It is, to me, crystal clear—is it to you?—that, if we do not detain aliens in removal proceedings, many will simply become fugitives and not be required to leave the country?

Secretary JOHNSON. Chairman, you are correct that there are a large number of undocumented in the country who are fugitives who have absconded after final orders of removal. I have looked at the same numbers.

One of the things that—

Mr. GOODLATTE. Let me get into the details here.

It has recently been revealed that, in 2013, DHS released from detention over 36,000 criminal aliens in removal proceedings or after they had been ordered removed, aliens with convictions ranging from homicide to sexual assault, to kidnapping, to aggravated assault, to drunk driving.

DHS stated in response that many of these aliens were released as a discretionary matter after career law enforcement officers made a judgment regarding the priority of holding the individual, given ICE's resources, and prioritizing for national security reasons.

Isn't it true that ICE attorneys decide whether to offer bond and set the amount of the bond? So isn't it also true that the DHS could have detained most of these criminal aliens, but simply chose not to?

Secretary JOHNSON. Chairman, I myself would like a deeper understanding of this issue. I have your letter on the subject. We re-

sponded yesterday. I don't know whether you received the response yet, sir.

But my understanding so far is that a number of those released in fiscal year 2013 were as the result of an order from an immigration judge or by an immigration officer acting pursuant to, consistent with, Supreme Court precedent and other law.

Certainly there is an amount of judgment that goes into that. So if someone is released, they are released pursuant to conditions that are intended to guarantee their return.

But I look at the same list you have seen, and I have seen some pretty serious criminal convictions on that list, including homicide and other things.

And so I want a deeper understanding of this issue myself to make sure that we are doing everything we should be doing to ensure public safety in this process.

Mr. GOODLATTE. And you note the homicides. For example, it was stated by the Department that mandatory releases because of court decisions account for 72 percent of those homicides. And, obviously, the Congress needs to address that.

Some of those mandatory releases were because of being held for a length of time the courts felt were inappropriate, and we need to make sure that that is addressed so that they are removed from the United States after they have served their sentences for homicide.

But that still leaves 28 percent of the murderers, a substantial number of people, who the DHS simply voluntarily released. So I hope that you will look into what is happening there and try to help us understand how this can be fixed.

The second issue I want to address is the issue of Secure Communities. It has been one of the most efficient mechanisms for removing dangerous aliens from the United States.

Through Secure Communities, the fingerprints of everyone arrested and booked for a crime by local law enforcement are checked against FBI criminal history records and also checked against DHS immigration records. If fingerprints match DHS records, ICE can seek immigration holds against the aliens and launch removal proceedings.

Former ICE Director John Morton has stated that, just to give you some sense of it, in very large jurisdictions in the United States, the rate of recidivism for criminal offenders can be as high as 50 percent or more.

When ICE can come in and remove offenders from a given community so that they can't reoffend, well, guess what. We take that recidivism rate to zero.

So, for example, if you have 100 criminal offenders, we are able to root them out. That is 50 crimes that will not happen over the next 3 years as a result of our enforcement efforts.

Do you agree with former Director Morton as to the power of Secure Communities?

Secretary JOHNSON. Well, I don't believe we should scrap Secure Communities. I believe, given the reality of where we are with this program in this country, that we need a fresh start.

We have mayors and governors signing executive orders and passing laws that limit our ability to effectively carry out this pro-

gram, and I think the goal of the program is a very worthy one that needs to continue.

So as part of the overall effort I am embarked in right now, I want a fresh start to this program and I want a fresh conversation with mayors and governors around the country to make this program work more effectively. We have got limitations being erected on our ability to conduct this program.

And I think it is an important program, but it is gotten off to bad messaging, misunderstanding in State and local communities about exactly what it is. Some people think it is a surveillance program. But you are right. It is sharing fingerprints between one Federal agency and another.

And I think, with clearer guidance and clearer understandings by mayors and governors, commissioners and sheriffs, of what our priorities are, we can go a long way to improving the Administration of this program, sir.

Mr. GOODLATTE. Well, not administrating the program is also a missed opportunity to address the problem with the release of criminal aliens back into our society.

Because when State and local law enforcement go to the trouble of identifying people and sharing that information and giving DHS more information about who should be removed and then they don't see them removed, as is the case in 85 percent of the aliens identified through Secure Communities in 2013, not being deported, I think that builds a lot of mistrust in the system and will cause the system to fail of its own.

So we encourage you to improve that system and to utilize it to a greater extent.

My time is expired.

And I am now pleased to recognize the gentleman from Michigan, Mr. Conyers, for 5 minutes.

Mr. CONYERS. Thank you, Chairman Goodlatte.

We appreciate your testimony here today, Secretary Johnson.

My concern is about the large numbers of people who are being deported each year who have committed very little violation except those related to their undocumented status.

They are people who have lived here for years, some for decades, many of whom were brought as children. They have jobs and families, including U.S. citizen sponsors and children or other close family who have legal status.

Their only offense arises from not being here lawfully. They can't get licenses. They can't drive. They can't work. So they use frequently a fake Social Security card and so on.

Let me ask you, as you complete your review of enforcement practices, will you take a close hard look at who is being targeted to make sure these people who have only immigration status violations are not made priorities?

Secretary JOHNSON. Yes. The concept of prosecutorial discretion is one that has been around for a long time in the criminal justice context and this context.

And I think, with the resources we have from Congress, we have to continually re-evaluate how best to prioritize who we enforce the laws against. And so that would be part of my objective.

Mr. CONYERS. Thank you.

Now, what factors do you think that the Customs and Border Protection and ICE should consider before referring some of these cases for prosecution?

I think that is an important consideration that comes from your experience and your analysis in the position that you hold now.

Secretary JOHNSON. I think that the priorities, in general, should be threats to national security, public safety, and border security. And so I want our men and women to focus on those priorities at the various points in the system.

I do believe that, at the border, at the border, the priorities have to be a little different for the sake of border security, border integrity.

I don't expect our Border Patrol agents, for example, to try to prioritize as they see people literally crossing the Rio Grande and stepping onto the shore.

I think we have to maintain border security and we have to avoid practices and policies that operate as magnets for further illegal migration.

But I do believe that our people should be encouraged to focus on, first, border security, public safety, national security.

Mr. CONYERS. Thank you.

I understand that much of the spike in immigration prosecution is related to Customs and Border Protection's Consequence Delivery System, which promises to assign some form of law enforcement consequence to nearly every person apprehended at the border.

These prosecutions come at significant expense. And, by contrast, your Department could effectuate a voluntary return or a form of removal for many of these people at little or no cost.

In deciding whether this is a good use of Federal resources, do you think it is important for CBP data and methodology on recidivism to be made public?

Making the data and methodology public and ensuring that it receives close scrutiny might help to either increase confidence in our current approach or lead to other improvements. What is your view?

Secretary JOHNSON. Let me answer that two ways.

First of all, I think that we should be careful to disincentivize illegal migration, as I suggested a moment ago.

I also support greater transparency in our policies, whether it is use of force at the border—and we have made some good progress there in making those policies more transparent—or other aspects of government policy.

And I have been an advocate for that in this Department and when it comes to our counterterrorism activities by the Department of Defense when I was general counsel.

Mr. CONYERS. My time is expired. I thank you for your responses.

Secretary JOHNSON. Thank you.

Mr. GOODLATTE. Chair thanks the gentleman and recognizes the gentleman from Alabama, Mr. Bachus, for 5 minutes.

Mr. BACHUS. Thank you.

Secretary Johnson, first I want to thank the Department of Homeland Security for their support for the National Computer Forensic Institute. It has solved many crimes.

It was initially designed for financial crimes, but they have actually solved hundreds of pedophile cases and child predator cases. And it trained law enforcement agents and judges all over the Nation. So I thank you for that.

The Department of Homeland Security is in a partnership with the Drug Enforcement Agency and ICE and local agencies to combat what I would call an epidemic of synthetic drug abuse. In May, you had Project Synergy, which actually seized millions of dollars, I think over 200 arrests.

There is two things that really alarm me about this. One is the targeted age. Most of the users of these synthetic drugs are between the ages of 14 and 25. At least one survey recently said 1 in 9 high school students is using synthetic drugs.

And then the results, which range—and I have a photograph which I am going to share privately with you. But it is a picture of two young people who actually died of an overdose from synthetic drugs, and the drugs were actually found there on the scene. And we have had those cases all over the United States.

The second is that, not only that, it is causing long-term psychotic depression or psychological damage to our young people.

But the most alarming thing—and I want you to maybe comment on this first—is it is my understanding from that operation that the great majority of these funds being made—and we are talking about millions and millions of dollars—were being sent to terrorist organizations in Yemen and Lebanon.

So I would ask you—first of all, we are talking about hundreds of millions of dollars from the sale of synthetic drugs here in the United States being used to fund terrorism, our enemies.

Do you believe that synthetic drug proceeds are funding terrorist and extreme organizations? And is this a national security issue? That would be my first question.

Secretary JOHNSON. Yes. Sir, I agree with you.

I recently attended a briefing on transnational criminal organizations that are engaged in—billions in illegal narcotic activities, and we are beginning to see a connection between these organizations and terrorist organizations where one is supporting the other.

So I agree very much with that observation, and I agree very much with the national security concerns that we should all have in this regard.

Within the Department of Homeland Security, HSI—Homeland Security Investigations—is very involved, as you pointed out, with DEA in dealing with the problem of synthetic drugs.

HSI, in my observation, is a terrific aggressive law enforcement organization. I have a good deal of confidence in their ability to address this issue, and I appreciate your interest in this.

Mr. BACHUS. From what I have read and learned from talking to DEA and other agencies, the actual majority of these funds derived from the profits are going to the Middle East.

Have you found that to be the case? Are you aware of that?

Secretary JOHNSON. I share that observation.

Mr. BACHUS. Thank you.

When I was on the Oversight Subcommittee, we had hearings on—and we focused on cocaine from Colombia. But I think synthetic drugs, which you don't hear a lot of talk about, should be getting the same attention today. And I am not sure the American people realize just how serious this type of drug use is.

Would you like to comment on that?

Secretary JOHNSON. It is a growing epidemic, sir. And when I was a prosecutor 25 years ago, it was crack cocaine. Now we are seeing other illegal narcotics that are causing a lot of destruction and heartache in our community.

And I think the Department of Homeland Security has a role in addressing this through HSI, CBP, other organizations within the Department. I think we have got a role, and I think we need to make an investment in this. So I agree with your assessment, and I share your concern.

Mr. BACHUS. Thank you.

The last thing I have learned is almost all of these synthetic drugs, the material is being produced in China and then shipped to the United States where, actually, \$1,000 worth can be turned into \$250,000 on the street.

The State of Alabama—and I am very proud of our legislature—they recently passed a law which is Senate Bill 333, which tries to stay one step ahead of drug producers.

What that law does—what happens is the drug producers and the people marketing these will change the contents just a little to sort of stay ahead of the law because, you know, most of the laws say it has to be a certain material and it has to be a combination.

And so all they do is tweak that drug. And I have actually been told that what they will do when they outlaw a certain combination, they will actually get on the phone and tell the folks in China, "Change that formula."

Mr. GOODLATTE. Time of the gentleman has expired.

Secretary can respond if he has a response.

Secretary JOHNSON. I share the Congressman's concern.

Mr. GOODLATTE. Thank you.

The Chair recognizes the gentleman from New York, Mr. Nadler, for 5 minutes.

Mr. NADLER. Thank you, Mr. Chairman.

I want to join in welcoming Secretary Johnson, especially as a former constituent and a graduate of Columbia Law School in my district.

Mr. Secretary, as you know, Congress passed a number of years ago the 9/11 Commission Implementation Bill which mandated that all maritime cargo must be scanned before it is loaded onto ships bound for the United States.

When we wrote the law, we recognized that 100 percent scanning would be difficult to achieve overnight, which is why we gave DHS flexibility, 5 years to comply and allow for extensions of the deadline in certain cases.

We assumed that 100 percent scanning would be phased in and that the Department would make an honest effort to comply with the law.

Can you tell us what the Department is doing to make progress on container scanning. And do you commit to work with us in good faith to develop a plan for implementing the law?

Secretary JOHNSON. Yes. As you and I have discussed, Congressman, I am very much aware of the 2007 law. It was first brought to my attention in the Senate confirmation process.

And my general view is, if there is a duly enacted law by Congress that mandates certain things, I have got to make a good-faith effort to try to comply.

Now, as you know, this particular law is a very large unfunded mandate. And so, when I got into office, I took a careful look at it. I have been to ports. I have looked at the logistics to try to set up a 100 percent scanning regime at overseas ports.

And it is, to be frank, a very, very large project. And I have asked my folks, first of all, "What is in our best national security interest?" Second, as long as the law is on the books, we have got to make a good-faith effort to try to comply with it.

And so I have had the conversation with Senator Markey, with you and others about how I am exercising my authority under the law to waive application of the law for the next 2 years.

But in that same letter, which I think you have seen, I have also talked about some of the steps we will take for a plan to try to get us there, in other words including raising the percentage of cargo that is scanned to move in the right direction on this and demonstrate we are making our best efforts at trying to comply. And it is set forth in the letter, which I think you have seen, sir.

Mr. NADLER. Yes, I have. I want to thank you for your willingness to work with us.

And I know that Homeland Security Ranking Member Bennie Thompson has been a great champion of this issue, too. And I am sure that he and I and perhaps others will want to meet with you to discuss in greater detail how we can develop a mutually agreeable path forward.

I would like to also say that it is obviously the policy of the Administration that we should close the detention facility Guantanamo.

We have been told by U.S. generals and others that the presence of that facility and our actions there have fueled terrorist sentiment and have been used to recruit terrorists who seek to do us harm.

Can you tell the Committee if you believe that keeping Guantanamo open is a threat to our national security. Is it fomenting recruitment of terrorists abroad and so forth?

Secretary JOHNSON. Thank you for bringing me back to my last job in public service.

Yes. I believe that the existence of Guantanamo as a detention facility represents an issue of national security. It has been a recruiting tool by Al Qaeda.

I also believe that the guard force there is remarkably professional. It is a very well-run facility, but it is also hugely expensive.

And there is going to come a point where—we may already be at that point it is no longer making sense from a taxpayer point of view to maintain such a hugely expensive multimillion dollar fa-

cility for what are today, I believe, something like less than 160 detainees.

And so I know the President is committed to closing the facility, and I think that that for a number of reasons is a worthwhile objective.

Mr. NADLER. Thank you.

My last question is back to immigration. In recent months, we have heard reports about Immigration and Customs Enforcement officers conducting routine immigration enforcement actions at courthouses around the country.

People have been apprehended by ICE when they went to the courthouse to pay a traffic ticket, to answer criminal charges, or to obtain a protective order. In one case, a person was detained when he appeared in court to get married.

These enforcement actions will make immigrants afraid to appear for criminal hearings, to exercise their First Amendment rights to petition the government for redress of grievances, to seek protective orders in connection with instances of domestic violence, to advocate for the equal justice under law, and conduct other important civic business.

ICE already has a policy regarding enforcement in sensitive locations such as schools, hospitals and places of worship.

Do you agree or not that courthouses, which are essentially for the protection of our constitutional rights, only if you have access to those courthouses, should be added to the list of sensitive locations for ICE-appropriate discretion?

Secretary JOHNSON. I received the letter on this, and I was a little surprised to find out that courthouses are not on the list of what we consider to be sensitive locations, though there is a separate policy dealing with courthouses that ICE has.

My view is that, as you articulated it, courthouses are special. We ought to have a special policy with regard to courthouses.

However, I can readily—I can see certain circumstances where somebody really dangerous shows up at a courthouse where ICE or law enforcement, in general, needs to apprehend that person, just can't afford to let him go.

Mr. NADLER. That would be the same if that person appeared at a hospital, too.

Secretary JOHNSON. I can foresee exigent circumstances where somebody truly dangerous who is a fugitive or otherwise should be arrested on the spot, and I would support that. But this is an issue that I intend to look at more closely.

Mr. NADLER. Thank you.

I yield back.

Mr. GOODLATTE. Thank you.

The Chair recognizes the gentleman from Virginia, Mr. Forbes, for 5 minutes.

Mr. FORBES. Mr. Chairman, thank you.

Mr. Secretary, thank you for being here. We appreciate your appearance today. Also, I appreciate your friendship, your service in the Department of Defense, and your service in your current position.

I was not surprised when I read on your confirmation hearing that you pledged transparency and candor with Congress, and it is that transparency and candor that we appreciate and we ask today.

We have had testimony before this Committee that violent criminal gangs are a major problem in the United States and some of those gangs, such as MS-13, are one of the most violent.

We have had——

Secretary JOHNSON. I am sorry, sir. I didn't hear——

Mr. FORBES. MS-13, one of the most violent criminal gangs, that as many as two-thirds——

Secretary JOHNSON. Yes.

Mr. FORBES [continuing]. Of their members were here illegally.

Last year, when ICE began releasing convicted criminals, I asked then-Director Morton how many of those released were members of violent criminal gangs, and I think the Committee was shocked that he didn't have a clue.

Based on your letter that you submitted, I think, yesterday to the Committee, we now know that in excess of 36,000 criminals have been released.

And the question I would have for you today is: Of the 36,000 released, do you have any clue how many were members of violent criminal gangs?

Secretary JOHNSON. If you are referring to the letter I think you are referring to, it is a letter signed by the Deputy Secretary yesterday.

And I believe that there is an attachment to the letter that has a numerical breakdown by category of the criminal convictions, and it may——

Mr. FORBES. But it says nothing about whether they are members of violent criminal gangs.

So my question is, one: Do you know of any records that you have of how many of those members released were members of violent criminal gangs?

Secretary JOHNSON. If we have it, I will be happy to provide it.

Mr. FORBES. You don't know of any today?

Secretary JOHNSON. Sitting here right now, I don't know whether it is broken down——

Mr. FORBES. Do you know whether we even ask individuals who are detained if they are members of a violent criminal gang?

Secretary JOHNSON. I suspect we do in the immigration enforcement process, but I——

Mr. FORBES. I would suggest you have no record of that. And, if you do, if you would correct me on that.

The third question is: Isn't it true that individuals can receive asylum for withholding of removal if they simply claim that they have renounced their membership in a gang?

Secretary JOHNSON. I am not sure about that, sir.

Mr. FORBES. And then let me ask you this——

Secretary JOHNSON. I know the asylum process. I am not——

Mr. FORBES. Let me ask you this question.

Secretary JOHNSON [continuing]. Sure of the specific answer to that question.

Mr. FORBES. Did you conduct a town hall meeting at DHS office in Fairfax, Virginia, on April 23, 2014, with ICE agents and officers present?

Secretary JOHNSON. Yes, sir, I did.

Mr. FORBES. Did they voice strong concerns to you that gang members, other public safety threats, and criminals are being released due to new Administration, DHS policy such as DACA, and John Morton's arrest priorities memorandum?

Secretary JOHNSON. We talked about a lot of things.

Mr. FORBES. Did they express concern about what I just outlined to you?

Secretary JOHNSON. I recall discussions about pay. I recall discussions about——

Mr. FORBES. That is not my question. And you know I have only got a certain amount of time, Mr. Johnson.

Did they or did they not express strong concerns to you that gang members and public safety threats and criminals were being released based upon the Administration's policies?

Secretary JOHNSON. I don't recall that statement in that way.

Mr. FORBES. Let me suggest that they did.

Secretary JOHNSON. But I'm not doubting they did if somebody says they did.

Mr. FORBES. The following question is this: Did these officers and agents tell you that the Administration policies have tied their hands, preventing them from keeping many dangerous criminals off the streets, and that, in their opinion as boots-on-the-ground officers in the field, the new policies are a failure?

Secretary JOHNSON. I don't recall it that way. I do recall a recognition that we should be going after the worst of the worst in our enforcement priorities.

Mr. FORBES. So you have no recollection that these agents expressed these concerns to you?

Secretary JOHNSON. That's not what I said.

Mr. FORBES. Do you have a recollection of that?

Secretary JOHNSON. I recall a general discussion about our enforcement priorities, and I recall that we all agreed that we should focus on the worst of the worst.

Mr. FORBES. Mr. Secretary, I understand what you recall there. That is not my question. My question is, do you or do you not recall them expressing strong concerns about the issues I just raised to you?

Secretary JOHNSON. Not exactly in the terms you stated it.

Mr. FORBES. Okay. But pretty close to those terms?

Secretary JOHNSON. In general terms, we had a discussion about our enforcement priorities. That is absolutely correct.

Mr. FORBES. Okay. And, Mr. Johnson, thanks for not answering that question. It certainly is a violation of what you pledged that you were going to do in transparency and——

Secretary JOHNSON. I gave you my best recollection, sir.

Mr. FORBES. I understand. I would think that would be a strong thing that you would remember if it was expressed that way, and it was expressed that way as I understand it.

Next question, final question I have for you is, we now know, based on a GAO report, that DHS has purchased 84 million rounds

of ammunition, totaling \$19 million. Can you tell us and give us a report back as to what that ammunition is used for and what caliber bullets are being used for?

Secretary JOHNSON. Sitting here right now, I can't give you that information. But I'd be happy to provide that to you.³

Mr. FORBES. And just for the record, the information I gave came from the ICE union who was present at that particular hearing with you, and they stated that that's what they expressed.

And with that, Mr. Chairman, I yield back.

Mr. GOODLATTE. Chair thanks the gentleman, recognizes the gentleman from Virginia, Mr. Scott, for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman.

And thank you, Mr. Secretary.

Mr. Secretary, in the aftermath of the typhoon in the Philippines many Members of Congress, and many people in the Filipino community, pushed for temporary protective status. Can you give me an update on what the status of the TPS for those in the Philippines is today?

Secretary JOHNSON. It is under review, and I believe we are close to the finish line on that review, sir.

Mr. SCOTT. Good. Keep pushing.

I understand that under the Prison Rape Elimination Act that regulations in Homeland Security are going into effect at this time. Are you proactively trying to renegotiate private contracts to make sure that the new regulations apply to contractors as well as the government facilities?

Secretary JOHNSON. I've checked on the status of that, and I believe that we are, sir.

Mr. SCOTT. Can you say something about the use of solitary confinement in government facilities and private facilities?

Secretary JOHNSON. Well, an immigration facility is not like a prison. I can imagine circumstances in any detention facility where somebody needs to be separated and placed in some form of solitary confinement for reasons of safety, force protection, or other circumstance. So I wouldn't rule it out necessarily. But I do recognize that an immigration detention facility is different in nature from a prison where convicted criminals are being housed.

Mr. SCOTT. Changing subject to Fast and Furious. It's my understanding that this process started during the Bush administration, that the Attorney General during that Administration was aware of it, and it continued into the Obama administration. But when Attorney General Holder found out about it, he put an end to it. To the best of your knowledge, is anybody in your Department now facilitating the trafficking of firearms to terrorists and drug dealers?

Secretary JOHNSON. Not to my knowledge, sir.

Mr. SCOTT. Thank you.

In terms of airport screening, there is a program spot screening passengers by observation techniques. Are you familiar with this program?

Secretary JOHNSON. Yes, I believe I am.

Mr. SCOTT. Can you explain how this can be done without ethnic profiling or how it can be done effectively?

Secretary JOHNSON. I think that behavioral screeners at airports—it is a pretty sophisticated methodology. I've had one or two briefings on it, and I've had the same question and the same concern. I'm satisfied that, whether it is airport security or other activities of the Department of Homeland Security, that there are ways to do what we need to do to screen for aviation security threats, other threats, without engaging in sort of any racial profiling.

Now, immigration enforcement, border security, is different from law enforcement in general. It's different from stop and frisk in general. We do in various contexts take account of the nationality of people in the Administration and enforcement of our immigration laws. And so there's a distinction there. But I do believe that we should not be engaging in racial profiling per se.

Mr. SCOTT. Thank you.

Could you say a word about the process for reviewing incidents of use of deadly force by Border Patrol officers and whether or not that review process is adequate?

Secretary JOHNSON. Yes. This issue has been one that I have focused on in my 5 months in office. As I suggested earlier, I think that transparency in our policies goes a long way to removing a lot of the controversy that may exist about a policy. And so a couple of months ago I encouraged CBP to make their use-of-force policy public, and the same with other components of DHS, and they have done that.

I also encouraged the Chief of the Border Patrol to think about incorporating expressly into the policies issues about rock throwing, issues about when an agent feels threatened by a vehicle, and he did that. And I believe that we now have a use-of-force policy that takes account of those things, which have been controversial in the past, but also preserves the agent's ability to defend himself if his life is truly threatened or he is in harm's way. So I think we are in a better place that we were before, sir.

Mr. SCOTT. And is the review process adequate?

Secretary JOHNSON. I'm sorry?

Mr. SCOTT. When there is the use of deadly force, you review each case. Is that right?

Secretary JOHNSON. Yes.

Mr. SCOTT. And is that review process adequate? I understand that in no case has anyone been sanctioned for inappropriate use of deadly force?

Secretary JOHNSON. I believe our officers should be held accountable for misconduct. I believe in that generally. Yes, sir.

Mr. SCOTT. Thank you, Mr. Chairman. My time has expired.

Mr. GOODLATTE. The Chair thanks the gentleman.

Recognize the gentleman from Iowa, Mr. King, for 5 minutes.

Mr. KING. Thank you, Mr. Chairman. I thank you for holding this hearing today. And I thank the Secretary for appearing and his testimony.

As I'm listening to the testimony here, I happened to hear an exchange earlier that you have developed a plan to address the OTMs and the unaccompanied children and that that has become a significant problem on the southern border, especially the southern tip of Texas. I heard that correctly, Mr. Secretary?

Secretary JOHNSON. Yes.

Mr. KING. Yes. And can you describe this plan to this Committee?

Secretary JOHNSON. Sure. A couple of things. And it's definitely a work in progress. We are building on this, because it is a growing problem and we need to take steps to address it. And I am open to additional steps. In fact, when I go back to my office I am going to have a meeting on this very subject to look at all the options on the table.

But what we have done so far, I have declared what's called a Level 4 state of readiness, which means we need to draw upon resources and assets of other departments to help us out. And I appointed within CBP a Federal coordinator for that effort. Number two, I have personally contacted the Secretary of HHS to highlight this as a problem that together we need to address, and she recognizes her obligations under the law to take these kids as soon as we identify them as unaccompanied children.

Mr. KING. Just for the information of this Committee, is this the plan that the President has asked you to withhold until such time as we get through the August break?

Secretary JOHNSON. No, this is something totally different.

Mr. KING. Okay. Could you describe the plan that the President has asked you to withhold until we get to the August break? I think this Committee is really interested in what it is, the sword of Damocles that is hanging over our head. We would be very interested in knowing what that is.

Secretary JOHNSON. What I am doing, what I am in the middle of reviewing right now is our enforcement priorities. That is what the President asked me to review in March. I actually had begun thinking about that before he made public his request, and I am still in the midst of the review. But he has asked me to hold on the announcement of that until the end of the summer.

Mr. KING. So if I asked you the question on what that might materialize to be as you know it today, your answer to me would be you don't want to answer that question?

Secretary JOHNSON. I'm not in a position to answer it right now, and my review is not complete, sir. So if I gave you an answer it would be a premature answer. I'm sorry, I misunderstood your question earlier.

Mr. KING. Well, thank you. I take it that this is some type of derivation of the DACA plan. That is what we anticipate here. This Committee, on this side at least, understands that there is specific Federal law that the President has ordered ICE not to follow. And there is a lawsuit that is out there now that is working its way through the courts, the case of *Crane v. Napolitano*, that addresses this separation of powers issue and prosecutorial discretion.

I'd ask you, does your policy that you're enacting now, the DACA policy—which I refer to as the deferred action for criminal aliens—does that create groups or classes of people as a result of the directive that we refer to as the Morton memos or DACA?

Secretary JOHNSON. DACA, as I understand it was enacted 2 years ago, and something like 600,000 people have enrolled in the program. It is up for renewal later this year. I anticipate that it will be renewed.

Mr. KING. Does it create groups or classes of people?

Secretary JOHNSON. I'm not sure I understand your question.

Mr. KING. By the definitions and the directives that are DACA or the Morton memos, is the result of that that the definitions create groups or classes of people, rather than, as I saw seven times referenced in that document delivered by Janet Napolitano, she said seven times, or referenced to, on an individual basis only, prosecutorial discretion on an individual basis only. I am asserting to you that it creates groups or classes of people and asking you whether you agree or disagree.

Secretary JOHNSON. I now understand your question. The way DACA works, there is an individual assessment of whether or not the person can be in the program based on a background check, based on the particulars of that person's situation.

Mr. KING. So as the clock has turned yellow, do you agree or disagree that it produces and results in groups or classes of people?

Secretary JOHNSON. There is a class of people who are eligible for the DACA program, but they've got to go through a background check for criminal history and so forth.

Mr. KING. May I ask you another question? I have an amendment that is pending a vote right now on the floor of the House of Representatives with regard to the Justice appropriations that directs the Attorney General to investigate these tens of thousands of criminals that have been released onto the streets, partly as a result of this program, partly of others. If that becomes law, will you cooperate with the Department of Justice in that particular investigation?

Secretary JOHNSON. You can always count on me to comply with the law, sir.

Mr. KING. Thank you, Mr. Secretary. Appreciate it.

Mr. GOODLATTE. The Chair thanks the gentleman.

Recognize the gentlewoman from California, Ms. Lofgren, for 5 minutes.

Ms. LOFGREN. Thank you, Mr. Chairman.

And thank you, Mr. Secretary, for being here with us today. I think that your openness is really a breath of fresh air here for the Committee, and the transparency that you are seeking to provide to not just the Committee, but to the country, is very welcome.

It is often said that the Immigration and Nationality Act is as complicated and convoluted as the Tax Code, and I think that is about right. Therefore it can be very confusing. I mean, it is easy to throw numbers around and impressions can be created that may not be accurate.

For example, it was stated earlier, I think by the Chairman, that the Committee had learned that between 2008 and 2011 ICE declined to take enforcement action against 160,000 people who were arrested by State or local law enforcement agencies. Now, the non-partisan Congressional Research Service produced the subpoena and provided us with a report, and according to their analysis more than 60 percent of those people were legal permanent residents of the United States. They couldn't be removed until they were convicted of an offense.

So I think it's important to note that we are not just talking about individuals who are present without proper immigration doc-

uments. We are talking people who are legal permanent residents of the United States, in some cases have lived here for decades, and maybe ran afoul of the law.

I'm concerned that as we take a look at how we are applying our enforcement standards, that we take a look at the nature of the offenses that are at issue. We know that the most common Federal prosecution in the United States today is felony reentry after removal. And in most of those cases, from best we can tell, those are individuals who are trying to get back to their families here in the United States. They are doing what former Governor Bush described as an act of love. They are trying to come back to be a parent to their children.

And so I'm hopeful that we can take a look at what we are actually doing here when you take a look at the review. I was looking at former Director Morton's detainer memorandum. I think it is very instructive why so many communities are refusing to cooperate with the Department today. And in fact the State of California passed a law saying they will not respond to the Department of Homeland Security. It says a prior felony conviction, but it doesn't actually specify that could—if that conviction is really just about immigration, trying to get back to their kids, we look at it differently than if you commit a criminal offense.

An individual has illegally reentered the country after a prior removal or return, an individual who has an outstanding order of removal. These are really immigration offenses and they deter individuals from cooperating with the police, which is why all the police chiefs have come out against the Secure Communities program.

So I guess my question to you, Mr. Secretary, is as you take your review of our enforcement, I think we all agree that we want to focus on people who are violent, who harm others. But I'm noticing that the single biggest removal category in 2013, more than half, was for immigration violations. Are you going to be able to take a look at those issues as you review this, sir?

Secretary JOHNSON. I'm in the midst of taking a look at those issues. One observation I'll make, I think that as I've looked at this guidance myself, which covers a multiyear period, I see a certain lack of clarity in the prioritization and the guidance, and I think we could do a better job there.

Ms. LOFGREN. Well, I thank you very much for that. And I wanted to just briefly touch on the unaccompanied alien minors. I know that you are concerned about the surge and that it is important. And we have recognized as a Congress, we've passed a law that these little children are not going to be treated as criminals. But what efforts can we make to deal with Central American nations so that they can take some responsibility for these little kids, I mean, some 3- and 4-year-old kids that end up in our custody?

Secretary JOHNSON. I've had this conversation with the Ambassadors from Mexico, Guatemala, El Salvador, and Honduras, this exact question. And I think a lot of it is public messaging in English and in Spanish. Don't send your child or send for your child through south Texas. A processing center in south Texas is no place for a child.

I think that we have to work with the governments of Central America on migration from their countries. I plan to go to Guate-

mala myself in the month of July on this issue. And there are a number of other things that I think we can do. And I'm sensing a fair amount of receptivity from those governments to work with us on this. I think we all recognize, including them, that we have a problem in this area and we need to more aggressively address. And that's one of my priorities, and I'm personally invested in it.

Ms. LOFGREN. Thank you very much, Mr. Secretary. I see my time has expired.

Mr. GOODLATTE. The Chair thanks the gentlewoman.

Recognize the gentleman from Arizona, Mr. Franks, for 5 minutes.

Mr. FRANKS. Well, thank you, Mr. Chairman.

And, thank you, Secretary Johnson, for being here with us today.

Mr. Secretary, I know you—

Secretary JOHNSON. Nice to see you again, sir.

Mr. FRANKS. Thank you.

I'm sure you've heard about the case regarding Meriam Ibrahim, the Sudanese Christian who was sentenced to death for apostasy. Her husband is a U.S. Citizen and she has two young children, one of which was just born 2 days ago in her mother's prison. Now, both of these children are eligible for U.S. citizenship, and this case has become so high profile that many of us are deeply concerned about Meriam's safety in Sudan, especially if she wins her appeal and is released back into the Sudanese society at large.

So my question to you, Mr. Secretary, will you assure this Committee that you will prioritize this case and quickly review the possibility of granting Meriam a safe haven in the United States?

Secretary JOHNSON. Congressman, I will personally, along with the appropriate component heads, take a look at this case. It sounds troubling.

Mr. FRANKS. Thank you. Is this a case you were aware of at this point?

Secretary JOHNSON. I was generally familiar with the case, I think. But I will take a look at the case, yes, sir.

Mr. FRANKS. Thank you, sir.

Mr. Secretary, the DHS Act of 2002, as you may know, lays out the roles and responsibilities of the Assistant Secretary of Infrastructure Protection. First, can you tell us which Federal agency has the primary responsibility of protecting the electric grid? And secondly, has your Assistant Secretary made recommendations to protect the electric grid from all known significant hazards, to include EMP and GMD, as mandated, of course, in her role? And if not, why would DHS hesitate to do everything possible to protect the electric grid from potentially catastrophic events?

Secretary JOHNSON. Within DHS, sir, NPPD, our National Programs Protectorate Directorate—I think I have got that right—is responsible for critical infrastructure, including power grids and the like. In conjunction with other Federal agencies, we have that responsibility. But it's not ours alone. It's a shared responsibility with other Federal agencies. But within DHS, that's the place where it belongs. And I agree with the sentiment of your question about the importance of protecting power grids and substations and the like.

Mr. FRANKS. Well, we have a letter from DTRA that expresses that the primary responsibility of protecting the power grid is assigned to the Department of Homeland Security with assistance from the Federal Energy Regulatory Commission. And I guess I'm just wondering why this isn't even insinuated right now in your emergency protocols, electromagnetic pulse or geomagnetic disturbance. And I'm hoping that if nothing else comes from this, that that is on your radar, because we have additional information that seems to indicate that the threat is more significant than we have been aware of. Will you take that back?

Secretary JOHNSON. I will be happy to take a look at that, sir.

Mr. FRANKS. All right. And with that, Mr. Chairman, I am going to yield back.

Mr. GOODLATTE. Chair thanks the gentleman, recognizes the gentlewoman from Texas, Ms. Jackson Lee, for 5 minutes.

Ms. JACKSON LEE. Let me thank the Chairman and the Ranking Member.

Mr. Secretary, thank you. Welcome to the Judiciary Committee. And let me on the record thank the many men and women of the Department of Homeland Security that I have had the privilege of working with for more than a decade, certainly since the heinous act of 9/11. All of us are committed to the security of this Nation, and we know that every day members of your staff, of this Department, are on the front lines unthanked. Not unappreciated. I'm sure my Members on this panel would say that they are appreciated. But they go by every day without thanks. And every day that we stay secure in this Nation we owe them a debt of gratitude, and I want to publicly make that point.

We work together to improve their work performance, how we can add resources that are effectively used, not just throwing money after an issue. And we are a team. And I think that is the approach that I hope that you perceive these questions, certainly mine, and recognize that we have to do this together.

I have a series of questions, and let me quickly proceed with them. I have worked with my colleague, Congresswoman Lofgren, for a number of years, and Members of this Committee, on the unaccompanied children. I know that you were at the border. The numbers should be stated for the record, some 60,000, an increase of over 800 percent since 2011. My Subcommittee on Border Security and Maritime Security on Homeland Security had a hearing and markup which we added language to the border security authorization bill on the determination of resources used in a slightly different perspective, on the issue of human trafficking, unaccompanied children.

But I raise these issues. I would partly like them to come in writing, because I have another series of questions.

I am concerned about the detention conditions of these children. We know that this Committee some years ago referred the HHS jurisdiction in particular on these children, particularly the families and youth commission. I understand that detained immigrants are the cleanup persons in some detention centers. I don't know if they are cooking food, but they are cleaning up. I want to know what is your understanding of that situation and whether children are used to clean up and do work as well.

What kind of legal representation does the DHS provide, or are they seeking to have a structure providing legal representation for these unaccompanied children?

If you could answer that. Let me just give my questions, I think it is important, because some of them you will have to give in writing and I apologize to you.

I have a sheriff that you have had the opportunity to meet with in Harris County who has mentioned the effectiveness of 287(g). Let me say that he has done an enormous job with respect of including or writing an MOU that would include having ICE at the table. But the real point is that under 287(g) we are finding out that 85 to 90 percent of the people are not terrorists and drug cartel members, but simply trespassers, marijuana possessors, mostly people working in the community, not dangerous.

And therefore, the funding that we are using is not capturing people to allow us to be safe. I would like to know whether you are assessing the effectiveness of 287(g) and the moneys that we spend for it.

Many of us have worked for the people who are now residing in Camp Liberty. The MEK has been declared a nonterrorist group in the United States. My understanding as these individuals at Camp Liberty are trying to assimilate and receive status in the United States, that DHS and FBI officers are asking them to deny their affiliation with the MEK, which is no longer a terrorist group. That poses a great difficult for any of these individuals trying to get here to the United States of America.

So I would like you to begin on the children and then work on the issue of the 287(g). But I would like you to get to MEK. So if you can't get to everything then just answer MEK and I will take the others in writing.

Secretary JOHNSON. First of all, thank you for those questions. We are concerned about the plight of the MEK, and we are taking a special look at interviewing them, screening them for the purposes that you have referred to. I am not on the ground there, I am not firsthand familiar with how that process is going, but it's something that I know our government is focused on, and we have made commitments that we seek to fulfill with regard to the MEK.

I'm very focused on the issue of the children in south Texas, as you know, Congresswoman. I visited there personally. I'm concerned about detention conditions, as I was in the Department of Defense, our detention facilities in DOD. I took a special interest in conditions of confinement and advocated for and saw a number of improvements to our conditions of detention. And so that's a special interest of mine that I'm continuing at DHS.

My understanding of the work program is it's voluntary in nature at our facilities. Nobody is required to work if they don't want to. It is a form of activity for people who want to work and get paid for their work. Now, is it a lot of money? I don't think it is. But it is a voluntary program.

Ms. JACKSON LEE. Well, let me just conclude by saying, if I can explore it further with you, if we can engage in meetings on this, as well as a further understanding of the actual questioners or people on the ground in Iran regarding Camp Liberty. You are not there, but the question has to be, if they have been removed off the

list, why would that be asked or seen as a bar, meaning that they have to denounce it? And I do think we need to be fair in the process.

So I look forward, Mr. Chairman—I thank the Chairman—I look forward to, Mr. Secretary, pursuing these more definitively, both in terms of the detention center and children, 287(g), which I mentioned to you, and the MEK. Thank you.

Mr. GOODLATTE. The time has of the gentlewoman has expired.

The Chair recognizes the gentleman from Texas, Mr. Gohmert, for 5 minutes.

Mr. GOHMERT. Thank you, Mr. Chairman.

Let me just say I agree with my colleague from Texas about Camp Ashraf and the injustices that have gone on, and appreciate you looking into that.

Secretary Johnson, back in 2011 and 2012 I had conversations here in a hearing with Secretary Napolitano about one of the top advisers at Homeland Security, named Mohammed Elbiary. I had asked her if she knew about his downloading of two documents utilizing the classified secret clearance that she had given him and she said no. However, the night before the director of the Department of Public Safety in Texas had been assured she was briefed that evening about the situation. So either Secretary Napolitano lied to me or we have people at Homeland Security that are lying to State officials. Neither of those is a good situation.

So I have got a letter here dated May 28 asking to you look into this. She said later in 2012 she had looked into the situation and said that he, Mr. Elbiary, did not shop these documents he downloaded. And the fact is there is a reporter that did the story and I know from talking to the reporter even yesterday that nobody contacted the reporter to get the information. It's kind of like asking Tsarnaev: Are you radicalized? Asking his mother: Are you radicalized? And then being satisfied that a Boston bombing won't occur. It is not adequate, and we hope that you will look into that. I have letter dated May 28 asking you to do that. Would you look into the matter further? It is a serious matter if someone with the Homeland Security Advisory Council has shopped information he downloaded. Wouldn't you agree?

Secretary JOHNSON. I read the exchange that you had with Secretary Napolitano a couple of years ago. I'm not—

Mr. GOHMERT. But my question is, do you agree that if someone on the Advisory Council has shopped documents to a national media outlet that he downloaded that would be a serious matter, wouldn't it?

Secretary JOHNSON. I agree that unauthorized disclosures of government information is problematic.

Mr. GOHMERT. Right. So would you agree to look further into the matter since nobody bothered to contact even reporter that put it in print that that had happened?

So also I found the Texas resources very reliable and I've provided information that from October 2008 to April 2014 Texas identified a total of 177,588 unique criminal alien defendants booked into Texas county jails. These individuals have been identified through the Secure Communities initiative in which Texas has participated since August of 2008. A review of these 177,588 defend-

ants shows they are responsible for at least 611,234 individual criminal charges over their criminal careers, including 2,993 homicides, 7,695 sexual assaults.

And I know that these numbers are staggering. ICE's total docket for 2013 was 1,813,504, with total departures of 386,000. So to the end of fiscal year 2013, less than 2 percent of ICE's caseload was in detention, and they report 872,000 cases on the docket who had received final orders of removal but had not yet been deported.

Since those cases are only counted after due process has been exhausted, sir, I know you are new to the situation, but are you going to formulate a plan to reduce the massive numbers of aliens in this country illegally that have been ordered removed from the United States?

Secretary JOHNSON. I may be new to the job but I'm responsible for the Department from the day I started.

Mr. GOHMERT. Sure.

Secretary JOHNSON. In general I believe that we need to do a better job of working more effectively with State and local law enforcement.

Mr. GOHMERT. My time is running out and I just need to know whether or not you are going to formulate a plan to reduce those numbers and the backlog awaiting deportation—been ordered deported.

Secretary JOHNSON. I think we need to reduce the backlog, but I need help from Congress to do that. You give me the resources to do the job. I have a finite amount of—

Mr. GOHMERT. Sir, that is the amazing thing. If you do the job, and we see you doing the job, then you get the resources you need.

I have other questions, and I would ask that the letters dated May 28 and May 29 be provided to the Secretary in seeking written answers to the questions, if you would be amenable to having those answered for me.

Secretary JOHNSON. Thank you, sir. I look forward to your letter. I will read it personally.

Mr. GOHMERT. Okay. Thank you. Let the record reflect those are being provided at this time. Thank you.

Mr. GOODLATTE. The Chair thanks the gentleman and recognizes the gentleman from Puerto Rico, Mr. Pierluisi, for 5 minutes.

Mr. PIERLUISI. You did it very well, Mr. Chairman. It is a hard one to pronounce. Thank you.

Secretary Johnson, welcome to the Committee. In your short time in office you have already proven yourself a worthy successor to Secretary Napolitano. She traveled to Puerto Rico in 2012, and I hope you will visit the island as well.

I would like to outline an narrative for you and then ask you to comment. I took office in 2009. That year there were about 900 homicides in Puerto Rico, home to less than 4 million American citizens. In 2010 there were nearly 1,000 homicides. And in 2011 there were over 1,100 homicides, an average over 3 a day, the most violent year in the territory's history.

In each year our homicide rate was four to six times the national average and twice as high as any State. Of every 10 murders in Puerto Rico, seven to eight are linked to the drug trade. Puerto

Rico is within the U.S. Customs zone and is used by organizations transporting narcotics from South America to the U.S. mainland.

Given this crisis, I examined the level of resources that DHS and DOJ were dedicating to combat drug-related violence in Puerto Rico and it was clear that the Federal law enforcement footprint on the island was inadequate. Let me give two examples on the DHS side.

First, in 2011 patrol aircraft from the Coast Guard, the lead agency for maritime drug interdiction, conducted a meager 150 flight hours of drug interdiction operations in Puerto Rico. If Puerto Rico were a State, that would have never been allowed to occur. Second, and also in 2011, CBP closed a boat unit in San Juan that had seized over 7,000 pounds of drugs the previous year. Clearly there was a disconnect between the problem in Puerto Rico and the Federal response.

Along with colleagues like Congressman Michael McCaul, who is now the Chairman of the Homeland Security Committee, I did everything within my power to highlight the need for additional Federal resources in Puerto Rico. My colleagues here can attest to this, having heard me raise this issue every time a DHS or DOJ official appears before this Committee. I have no alternative because the stakes are too high.

Starting in 2012, our message finally began to sink in, particularly at DHS. Much of the credit owes to Secretary Napolitano who, as noted, traveled to Puerto Rico and upon her return created a DHS task force charged with taking steps to reduce Puerto Rico's murder rate. As a result of this initiative, ICE surged 30 agents to Puerto Rico last year where they made hundreds of arrests and seized vast quantities of illegal drugs and firearms.

Between 2009 and 2013, the Coast Guard tripled the number of days its ships spent conducting counterdrug operations in the waters of Puerto Rico. The number of Coast Guard flight hours increased from 150 in 2011 to approximately 1,000 in 2013. And CBP, having assumed control of the counterdrug Aerostat radar program this year, moved quickly to repair the radar in southern Puerto Rico that had been destroyed because of bad weather in 2011.

The result of this DHS effort, combined with enhanced effort by DEA and DOJ and other DOJ component agencies, has been remarkable. Puerto Rico still has the highest murder rate in the country, but the number of homicides this year is on pace to be 40 percent lower than 2011.

The lesson, Mr. Secretary, is clear. When the Federal Government is committed to combating drug-related violence in Puerto Rico, hundreds of my constituents' lives are saved each year. I'd like to give you the chance to comment on the narrative I just laid out, and I hope you can assure that Puerto Rico will continue to be a top priority for the agency you now lead.

Secretary JOHNSON. Well, first of all, thank you for the comments. I'm pleased to know that we have been able to make progress since 2012 in what is obviously a very, very important issue and a very big problem.

Hopefully, I'd like to be able to continue the progress that Secretary Napolitano began in 2012. This is an issue for me that I in-

tend to focus on, and hopefully together we'll be able to continue to make that progress, make good progress.

Mr. PIERLUISI. Thank you.

Mr. GOODLATTE. The Chair thanks the gentleman and recognizes the gentleman from Texas, Mr. Smith, for 5 minutes.

Mr. SMITH OF TEXAS. Thank you, Mr. Chairman. I have a brief statement and then I have some questions after that.

The Department of Homeland Security last year released 36,000 criminal immigrants into our neighborhoods. This would be considered the worst prison break in American history, except it was approved by the President and carried out by immigration officials. By the Administration's own admission, 90 percent of those who were voluntarily released had committed thousands of crimes such as murder, sexual assault, kidnapping, drug trafficking, and hit and run. Should someone be charged with crimes against humanity?

Here are some of the other ways the President has ignored or undermined current immigration laws. The Secure Fence Act of 2006 requires the DHS to prevent all unlawful entries into the U.S., yet the Government Accountability Office reported in 2011 that only 6.5 percent of the southwest border is under full control. The DHS' widespread abuse of prosecutorial discretion ignores the statutory requirement to apprehend and remove illegal immigrants.

Immigration and Customs Enforcement weakened the rules that required illegal immigrants to be detained. The Administration has undercut the ability of local law enforcement officials to apprehend illegal immigrants, and currently the DHS is reviewing deportation policies and no doubt will weaken them even more.

If the President cannot be trusted to enforce current immigration laws, how can he be trusted to enforce future immigration laws?

Mr. Secretary, a couple of questions. First of all, in regard to the homicides that have been committed by those who were voluntarily released, will you be able to provide this Committee with the details of those homicides? Who was involved, the nature of the crime, the date, and so forth?

Secretary JOHNSON. It is something that I am interested in understanding further, and I will provide that information to you also.

Mr. SMITH OF TEXAS. Okay. You have that information, do you not, in hand?

Secretary JOHNSON. I'm sorry?

Mr. SMITH OF TEXAS. You have and information available to you, do you not?

Secretary JOHNSON. I will share that information to you once I have it. I wrote you a letter.

Mr. SMITH OF TEXAS. Right.

Secretary JOHNSON. We wrote you a letter that was signed out yesterday that more generally talks about this issue. But I'm interested in understanding further some of these more serious cases, and I will share that information with the Committee.

Mr. SMITH OF TEXAS. Okay. You had that information or you wouldn't have been able to give us the details you did in the letter that you wrote. When can we expect to get the details of those homicides?

Secretary JOHNSON. Not long after I get it.

Mr. SMITH OF TEXAS. Do you expect that to be in the next week or two?

Secretary JOHNSON. I'm not sure, but not long after I get it, sir. I will make that commitment to you.

Mr. SMITH OF TEXAS. Okay. Are you saying under oath right now you do not have that information?

Secretary JOHNSON. What's that?

Mr. SMITH OF TEXAS. Are you saying under oath right now you do not have that information?

Secretary JOHNSON. I personally do not have the information about the specific details of those cases.

Mr. SMITH OF TEXAS. Not you personally, but the DHS does not have that information? Are you saying that?

Secretary JOHNSON. Somewhere in the Department hopefully that information exists.

Mr. SMITH OF TEXAS. Okay.

Secretary JOHNSON. I have asked for a greater understanding of these particular cases, and I'm waiting for the answers to that information.

Mr. SMITH OF TEXAS. And you will get that to us, we hope, in a timely fashion. Is that right?

Secretary JOHNSON. I don't have a problem with sharing further details about these particular cases with the Committee.

Mr. SMITH OF TEXAS. Okay. Thank you.

My second question is this: In your prepared testimony for today you said comprehensive immigration reform is not amnesty. Let me read you the definitions of amnesty. The first is from Black's Law Dictionary, "A pardon extended by the government to a group or class of persons. The 1986 Immigration Reform and Control Act provided amnesty for undocumented aliens already present in the country." And from Merriam-Webster Dictionary, "The act of an authority as a government by which pardon is granted to a large group of individuals."

Now, whether individuals pay a fine or back taxes to receive citizenship is irrelevant to the definition of amnesty. Therefore, would you agree that the Administration has given amnesty to thousands of individuals and that the Senate immigration would have provided amnesty to millions of individuals, at least under the definitions that I just read from you Black's Law Dictionary and from the Merriam-Webster Dictionary?

Secretary JOHNSON. Through prosecutorial discretion, we prioritize our use of resources. And through the DACA program, we can defer action to a certain category—

Mr. SMITH OF TEXAS. Mr. Secretary, that is not an answer. Do you agree with the Administration's policies that resulted in amnesty to hundreds of thousands of people and do you agree that the Senate bill would have provided amnesty to millions of people under the definitions that I just read you?

Secretary JOHNSON. That's not what I consider amnesty.

Mr. SMITH OF TEXAS. So you disagree with Black's Law Dictionary's definition of amnesty?

Secretary JOHNSON. I don't believe that DACA or any act of prosecutorial discretion in the administration of our immigration laws

constitutes amnesty as I understand the concept of amnesty, and I think I do.

Mr. SMITH OF TEXAS. Why wouldn't your concept of amnesty include the definition of amnesty in Black's Law Dictionary?

Secretary JOHNSON. I'm not sure the answer to your question.

Mr. SMITH OF TEXAS. Well, it seems to me it is kind of amazing that you would disagree with the longstanding definition of amnesty as given in various dictionaries. Now, it is not the first time the Administration wants to change the definition or change the terms. But I am absolutely amazed that you don't recognize the legal definition of amnesty.

Thank you, Mr. Chairman. I'll yield back.

Ms. LOFGREN. Mr. Chairman, could I ask unanimous consent to put into the record two statements.

Mr. GOODLATTE. Sure. Would the gentlewoman describe those statements?

Ms. LOFGREN. One from the National Immigration Forum and one from the Human Rights First organization.

Mr. GOODLATTE. Without objection, those will be made a part of the record.

[The information referred to follows:]



Statement for the Record

House Judiciary Committee

“Oversight of the U.S. Department of Homeland Security”

May 29, 2014

The National Immigration Forum works to uphold America's tradition as a nation of immigrants. The Forum advocates for the value of immigrants and immigration to the nation, building support for public policies that reunite families, recognize the importance of immigration to our economy and our communities, protect refugees, encourage newcomers to become new Americans and promote equal protection under the law.

Introduction

The National Immigration Forum appreciates that the Committee is carrying out its traditional oversight function in holding this hearing on the Department of Homeland Security (“Department” or “DHS”) and looks forward to the Committee playing a vital role in influencing and guiding Department priorities. Given the size of the Department and the scope of its responsibilities, effective oversight by this Committee is essential to ensuring that DHS carries out its mission to prevent and respond to emergencies impacting the homeland. In light of this obligation, the Forum urges the Committee and Secretary Johnson to examine existing DHS immigration enforcement policies to guarantee that the priority is on locating and addressing the most significant criminal and security risks and ensure that resources are properly utilized toward this goal.

The ongoing oversight role of the Judiciary Committee over DHS is sensible and constructive. However, under the current jurisdictional arrangement, the Department must report to more than 100 congressional committees. This arrangement is confusing and duplicative. The Forum encourages this Committee to work towards streamlining oversight of DHS into a more manageable handful of committees.

As this Committee carries out its oversight function, the Forum notes the importance of legislation to reform our broken immigration system, and urges this Committee to continue its work on a broad immigration reform that includes toughened border security and enforcement as well as an earned path to citizenship for those currently residing in the United States. The passage of broad immigration reform legislation is urgent, necessary, and achievable. We believe that the current conversation around immigration reform is different and the time is now for Congress to lead on the issue. In the past two years, an alliance of conservative faith, law enforcement and business leadership has come together to forge a new consensus on immigrants and America. These



relationships formed through outreach in the evangelical community, the development of state compacts, and regional summits across the country.

In early December 2012, over 250 faith, law enforcement and business leaders from across the country came to Washington, D.C. for a National Strategy Session and Advocacy Day. They told policymakers and the press about the new consensus on immigration in America. In February 2013, to support these efforts, the National Immigration Forum launched the Bibles, Badges and Business for Immigration Reform Network to achieve the goal of broad immigration reform. In October of 2013, to help achieve that goal, this network co-hosted Americans for Reform at a two-day event where participants organized and attended 185 Hill meetings (145 with Republicans).

As the Committee and the Secretary look to tackle future challenges for DHS, it is important to not become singularly focused on immigration enforcement. A singular focus on enforcement will not result in workable solutions and gives the appearance of an attempt to score political points. Certainly, we must do what we can to ensure that real threats, including terrorists, transnational criminal organizations and human traffickers cannot exploit our borders to do harm. But heads of Homeland Security under both Republican and Democratic Administrations have stated that the best way to improve border security is to fix the immigration system by providing legal avenues for workers to enter the United States when needed and permit family reunification. This will allow law enforcement and border officials to focus on the true criminal and terrorist threats rather than expending excessive resources on economic migrants.

The Forum has written extensively on the need for smart enforcement at our nation's borders and the interior of the country, including the following recent Forum papers: ["What Does Smart and Effective Enforcement Look Like?"](#), ["The 'Border Bubble': A Look at Spending On U.S. Borders"](#), ["The Math of Immigration Detention"](#) and ["Cut Here: Reduce Wasteful Spending on Immigration Enforcement."](#) This Committee can provide valuable oversight over DHS's enforcement priorities – and we encourage the Committee to urge DHS to strike the right balance in achieving smart enforcement that focuses on dangerous criminals while minimizing policies that split apart families.

Review of Immigration Enforcement Policy

In recent months, the Obama Administration has been conducting a much-publicized review of federal immigration enforcement policy. As part of this review, Secretary Johnson has been meeting with stakeholders from across the political spectrum to gather input and inform his decision making process. The Forum welcomes this review in order to create more efficient and humane immigration policies, and appreciates the Secretary's willingness to engage with such a wide cross-section of the immigration policy community. On Tuesday the Forum along with National Hispanic Christian Leadership Conference (NHCLC), Service Employees International Union (SEIU), Sojourners, The Leadership Conference on Civil and Human Rights, and the



United States Conference of Catholic Bishops (USCCB) Committee on Migration asked the administration to give Congress room to act and not implement executive action until the legislative window closes. We strongly believe that bicameral, bipartisan legislative action is the only way to provide the broad-based overhaul needed to update our nation's immigration system. Our view is that significant executive action by the Administration concerning immigration enforcement policy would serve to seriously jeopardize the possibility of legislative action this year. In the event that Congress is unwilling or unable to achieve a bipartisan, commonsense compromise over immigration reform, the administration should take reasonable steps to mitigate some of the worst problems of the current system. To that end, we were pleased to see the announcement by Obama administration this week to do just that, giving Congress room to act and waiting till the legislative window has closed before acting on its enforcement review.

Should the window for congressional action this year close, the Forum believes that the administration's review of immigration enforcement policy can yield commonsense, humane improvements. With detention and removals at record levels, an increasing number of families -- including thousands of mixed families with U.S. citizen children -- have been broken. Despite the existence of policy memoranda from U.S. Immigration and Customs Enforcement (ICE) prioritizing criminal offenders, recent studies have shown that the bulk of those removed lack criminal records aside from immigration offenses and pose no danger to the general public. The administration can clarify and reissue existing guidance to ensure that the focus remains on those posing the greatest danger. Simply by making a few changes in how it implements the existing Secure Communities program, the administration can pursue a more humane removal policy focusing on dangerous criminals rather than minor offenders.

The federal government coordinates with local law enforcement to carry out immigration enforcement and detention policies under the Secure Communities program. Under the Secure Communities program, DHS is able to scan federal databases to determine whether detainees held by local police are removable under federal law. In recent months, the program has faced increasing criticism from states and localities who have grown frustrated with DHS's inability to tailor the program toward dangerous criminals -- consistent with the Department's existing prioritization policies. As states and localities face the mounting costs of detaining a growing number of immigrants for the federal government, including potential civil damage awards from federal courts for those improperly identified and held without probable cause, it is increasingly apparent that DHS needs to refine the criteria to detain a detainee under Secure Communities. Currently, DHS classifies the immigrants brought into custody in 3 different levels: Level 1 (individuals who have committed one "aggravated felony" or two other felony offenses), Level 2 (individuals with multiple immigration offenses), and Level 3 (Public Disorder/driving without a license and other misdemeanors). The overwhelming majority of those classified as Level 2 and 3 have no criminal records aside from immigration offenses and pose no danger to the public at large. The Forum believes that, in operating Secure Communities, DHS should primarily devote resources to bringing Level 1 detainees into federal custody, while deprioritizing Level 2 and 3



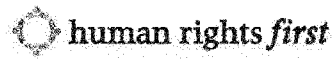
offenders. Deprioritizing Level 2 and 3 offenders, many of whom are members of mixed families including U.S. citizen children, would allow DHS to focus its resources on dangerous criminals while reducing enforcement costs. The change would promote keeping families together, representing a humane adjustment to existing policy at little to no risk to U.S. citizens.

While focusing resources on detaining Level 1 offenders, the Forum notes that the current definition of Level 1 may be over-inclusive. Over time, the definition of an "aggravated felony" under federal law has expanded to arbitrarily encompass a number of non-violent or minor offenses – including certain financial crimes (like including cashing a check without sufficient funds) or missing a court appearance. While such crimes merit punishment, they do not rise to the level of other traditional aggravated felonies, like murder, assault or drug trafficking. This Committee should take the lead in reexamining the current definition of "aggravated felony" and determine the most reasonable definition of a Level 1 category.

Conclusion

Continued advancements in immigration enforcement will depend on broader reforms to our broken immigration laws. The system must change so that enforcement resources can target real threats. The American people want – and deserve – better immigration policy. Dozens of national polls over the last year show overwhelming support for solutions that include, in addition to smart enforcement, functioning legal channels for future immigrant workers and families. The polls also show broad support for tough but fair rules allowing undocumented immigrants to remain in the U.S. to live and work and – provided they get right with the law – eventually have an opportunity to apply for earned U.S. citizenship. This Committee, and Congress generally, should work to pass the necessary reforms to make our immigration system functional, workable and humane. In the absence of congressional action, the administration can take steps to improve the dysfunctional system – notably, by reforming the implementation of the Secure Communities program to focus on Level 1 offenders – those who have committed aggravated felonies and pose a greater danger to the public. But administrative action by itself is no substitute for Congress passing broad immigration reform legislation.

Our immigration problem is a national problem deserving of a national, comprehensive solution. The Forum looks forward to continuing this positive discussion on how best to move forward with passing and enacting broad immigration reform into law. The time is now for immigration reform.



STATEMENT FOR THE RECORD OF ELEANOR ACER

Director, Refugee Protection

HUMAN RIGHTS FIRST

On

“Oversight of the U.S. Department of Homeland Security”

Submitted to the

House Judiciary Committee

May 29, 2014

**Statement for the Record
Human Rights First**

About Human Rights First

Human Rights First is a non-profit, nonpartisan human rights advocacy organization that challenges America to live up to its ideals. For over 30 years, we've built bipartisan coalitions and teamed up with frontline activists and lawyers to tackle issues that demand American leadership, including the protection of the rights of refugees. Human Rights First oversees one of the largest pro bono legal representation programs for refugees in the country, working in partnership with volunteer attorneys at U.S. law firms.

The Rise in Protection Requests on the U.S.-Mexico Border

Over the last few years the number of individuals detained in "expedited removal" along the U.S. southern border who have expressed a fear of return has sharply increased. The overwhelming majority of these people are from El Salvador, Guatemala, Honduras and Mexico, where a rise in murders, rape, violence against women, kidnappings, extortion, and other brutality - fueled by political instability, economic insecurity, breakdown of the rule of law, and the dominance of local and transnational gangs - are prompting many people to flee their homes.

It has been suggested that this increase in protection requests reflects fraud, and that asylum is a "loophole" that allows perpetrators of fraud to gain entry to the United States. This view has led some to call for more immigration detention and for changes to lower pass rates for the expedited removal system's protection screening interviews, called "credible fear" interviews. Yet there is also broad agreement that protecting those who flee persecution is an important American value.

How to address the multiple challenges associated with this increase in protection requests presents the U.S. government with a thorny dilemma, one that is complicated by the political demands to secure the border before moving ahead with immigration reform legislation. The recommendations outlined below are informed by Human Rights First's recent visits to key border points, border patrol stations, and immigration detention facilities in Arizona, California and Texas as well as our first-hand experience assisting and providing *pro bono* representation to asylum seekers including some who have come to this country through the southern border. Human Rights First will release a detailed Blueprint of recommendations in June 2014.

The Resource Imbalances

Over the years, resources for immigration enforcement, including Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) have quadrupled – rising from \$4.5 billion in 2002 to \$18 billion in FY 2013. Under expedited removal, immigration enforcement officers, rather than immigration judges, can order the deportation of immigrants lacking valid documentation. Not only has the use of expedited removal increased, but so too have the number of individuals referred into expedited removal's credible fear process, rising from 7,917 in 2004 to 36,035 by 2013. This increase is particularly steep between 2010 and 2013 – with the number more than doubling between 2012 and 2013.

Despite the sharp increase in expedited removal in recent years and the massive increases in resources for CBP and ICE which handle the initial stages of the expedited removal process,

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there was not a parallel sharp increase in resources for expedited removal's credible fear screening process or the subsequent adjudication process before the immigration courts. The immigration system at the border is imbalanced, with extraordinary resources put in to the capacities to apprehend and detain but too few resources allocated to the protection and adjudicatory components of the expedited and regular removal processes. This imbalance has led to backlogs and delays that can undermine the integrity of these systems, increase costs at the tail end of the process, and leave asylum seekers in limbo for years. It has also prompted changes that have undermine protection – like the shift to the use of telephone calls to conduct credible fear interviews and efforts to heighten the credible fear standard.

As the use of expedited removal and number of credible fear interviews grew over the years, so too did the wait times and backlog in credible fear interviews. To address these delays, the USCIS Asylum Division began redeploying staff to conduct credible fear interviews more promptly after arrival, hiring additional staff, and increasing the use of the telephone to conduct interviews with asylum seekers held at detention facilities that are often located hours away from immigration detention facilities. The deployment of asylum officers from the affirmative asylum process to address the credible fear delays has led to a growing backlog of affirmative asylum filings; and many “affirmative” asylum seekers now wait months or years for their asylum interviews – a potential vulnerability that could be exploited, and also a source of enormous hardship to legitimate asylum seekers. Prolonged delays also remain in “reasonable fear” interviews (the screening interviews conducted as part of reinstatement of removal).

The immigration court system, which receives the expedited removal cases that successfully pass out of the credible fear process, is widely recognized to be overstretched, backlogged, and underfunded. While immigration enforcement budgets increased by 300% between 2002 and 2013, funding for the immigration courts has lagged far behind, increasing by only 70%. Over 366,000 immigration removal cases, including those involving claims for asylum, have now been pending for an average of 578 days.

Alternatives to Detention

Alternatives to detention, including the technology-only slots operated by ICE itself, the more case-management or intense electronic monitoring forms operated by a private contractor, or pilots with social service providers have been used increasingly in recent years. Alternatives to detention (ATDs) save costs, with the current contract at a mere 17 cents to \$17 rather than the \$160 per day average of one detention bed. In addition, the most recent statistics report that 97.4% percent of participants in the ISAP II alternatives to detention program used by ICE appear at their final immigration court hearing, and 85 percent comply with removal orders. With alternatives to detention used increasingly in the criminal justice system, a wide range of experts – including the Pretrial Justice Institute, the Texas Public Policy Foundation (home to Right on Crime) – have endorsed alternatives as cost-saving.

ICE should step up its capacity to use alternatives to detention as a major part of its strategy to address any appearance concerns relating to individuals who need additional supervision to assure appearance upon release from detention after crossing or arriving at the southern border. A greater focus on identifying individuals who meet the requirements for parole, bond or release

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on alternative monitoring measures, will help free up more bed space so that asylum seekers and immigrants are not held for days in CBP custody while waiting for space to become available. Rather than pointing to a need for additional detention facilities, this situation could be managed with a much better use of existing detention space.

The Administration and DHS should reject the notion that it is required to fill a minimum number of beds and strongly support a shift to using alternatives to detention, rather than detention, in appropriate cases that do not present safety risks. Congress should increase appropriations for alternatives to detention and eliminate the bed “quota,” appropriations language that some interpret as a requirement that a minimum number of beds be filled regardless of need. Congress should also grant ICE flexibility to shift funds, based on need, between detention and alternatives to detention. Moreover, by adequately funding the immigration courts and eliminating hearing delays, the cost-savings of alternatives will be fully realized.

Effective, Fiscally-Prudent Solutions that Reflect American Values

The Obama administration and the U.S. Congress have the tools to address these complex challenges. The administration should step up its use of alternatives to detention, repair protection safeguards, and enhance tools for addressing abuse. Congress should properly resource the asylum office and immigration courts to reduce backlogs and vulnerability to abuse, support legal presentations in more immigration detention facilities and within days of detention, and support the increased use of alternatives to detention. These solutions are fiscally prudent, effective and reflect American values. For example, alternatives to detention have been endorsed by a wide spectrum of groups and are increasingly turned to in criminal justice systems because they are highly effective measures that can help meet the government’s objective to secure appearance, while mitigating much of the immense human and fiscal costs of institutional detention. Initiatives that provide immigrants with accurate legal information have been demonstrated to improve efficiencies in immigration court, and certainly contribute – along with quality legal counsel – to more just and fair results. Measures such as adequately funding the immigration courts and asylum office, which will require appropriations of additional funding, will strengthen systems that have been neglected for years and constitute smart investments in the integrity of the U.S. immigration court and asylum systems. We know timely asylum and immigration court removal processes deter people from exploiting them. U.S. immigration authorities, at every step in the process, also have extensive tools to identify potential abuse, criminal activity and security risks and these tools have been significantly enhanced in recent years.

RECOMMENDATIONS

In order to address the increase in protection requests at the border Human Rights First recommends:

PROPERLY RESOURCE ASYLUM OFFICE AND IMMIGRATION COURTS TO REDUCE BACKLOGS AND VULNERABILITY TO ABUSE

- Increase asylum office staffing to address backlogs, conduct timely in-person credible fear and reasonable fear screening interviews, and timely affirmative asylum interviews.
- Increase the number of immigration court judges to address removal hearing delays and eliminate backlogs.

LAUNCH MEASURES TO INCREASE RATES OF APPEARANCE

- Step up capacity to use alternatives to detention nationally to for border arrivals in need of appearance support who are released to other parts of the country.
- Create and staff new ICE positions to support appearance, parole, and alternatives.
- Enable staffing for timely immigration court hearings through increased funding and staffing.
- Facilitate immigration court appearance through timely filing of Notices to Appear and changes of venue to court where asylum seeker is located.

ADDRESS GAPS IN ACCURATE INFORMATION ABOUT THE PROCESS

- Expand cost-efficient legal information presentations and provide presentations within a few days of detention.
- Support increased quality legal representation for indigent detained asylum seekers early in the process.

STRENGTHEN – DO NOT WEAKEN - PROTECTION SAFEGUARDS

- Conduct credible fear interviews in person and in a timely manner, and end telephone interviews and fix flaws in the USCIS credible fear Lesson Plan.
- Implement U.S. Committee on International Religious Freedom (USCIRF) recommendations on expedited removal and improve CBP interviews.
- Facilitate and support updated USCIRF study of expedited removal and detention.
- Roll back use of expedited removal, particularly if its protection interview component is not adequately resourced.
- Review and improve other protection mechanisms.

**EFFECTIVELY IMPLEMENT PAROLE, BOND, AND ALTERNATIVES TO
DETENTION**

- Step up capacity to use alternatives to detention nationally for border arrivals in need of appearance support who are released to other parts of the country.
- Conduct regular training and oversight on bond and parole so they are effectively implemented.
- Stop using prisons, jails, and jail-like facilities and develop civil immigration detention standards.

**ENHANCE TOOLS FOR DETECTING AND INVESTIGATING ABUSE AND
CRIMINAL ACTIVITY**

- Utilize multiple tools for detecting abuse and criminal activity, and refer suspected fraud or criminal activity for investigation.
- Prioritize prosecutions of individuals who orchestrate schemes that defraud the immigration and asylum systems.
- Increase ICE capacity to manage caseload and verify information.

Conclusion

Effectively addressing these challenges should be a top priority for both the Administration and Congress. This surge is part of a pressing challenge along the southern border. The United States has a strong interest in maintaining the integrity and effectiveness of its immigration and asylum systems and safeguarding them from abuse. This interest is particularly crucial during a very public debate on immigration reform. America also has a strong interest in maintaining its global leadership in protecting the persecuted. Over thirty three years ago, President Ronald Reagan signed into law the Refugee Act of 1980, which passed Congress with strong bi-partisan support, enshrining into domestic law America's historic commitment to protect the persecuted. As the Council on Foreign Relations Independent Task Force on Immigration Policy, co-chaired by former Florida Governor Jeb Bush and former Clinton White House chief of staff Thomas "Mack" McLarty, pointed out – and a group of leading Republicans recently affirmed – the U.S. commitment to protect refugees from persecution is “enshrined in international treaties and domestic U.S. laws that set the standard for the rest of the world; when American standards erode, refugee face greater risks everywhere.”¹ America can and should stand firm as a beacon of hope for those fleeing persecution.

¹ Statement in Support of U.S. Commitment to Refugees available at <http://www.humanrightsfirst.org/sites/default/files/Republican%20Statement.pdf>.

Ms. JACKSON LEE. Mr. Chairman?

Mr. GOODLATTE. For what purpose does the gentlewoman from Texas seek recognition?

Ms. JACKSON LEE. I would like to ask unanimous consent to add into the record a report by First Focus, "The Cost of Inaction: Why Children Can't Wait for Immigration Reform."

Mr. GOODLATTE. Without objection, the document will be made a part of the record.

[The information referred to follows:]



THE COST OF INACTION

Why Children Can't Wait for Immigration Reform

Wendy D. Cervantes

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October 2013



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In June of 2013 the U.S. Senate passed a bipartisan comprehensive immigration reform bill, and now the House of Representatives has the opportunity to advance immigration reform before the year is over. Among those waiting for the House to take action are the millions of children who are directly impacted every day by outdated immigration laws that fail to take into account their multiple and diverse needs. These children include the undocumented youth who have grown up in the U.S. (often referred to as "DREAMers"), the U.S. born children of immigrants, and the "unaccompanied" immigrant children who made the dangerous journey to the U.S. alone in search of refuge or loved ones. For all these children, inaction on immigration reform carries a very high cost.

While it is a core American value to ensure the safety and well-being of our children, the U.S. faces the growing challenge of how to best protect children during a time when the political agenda is being largely driven by strong enforcement policies in response to undocumented immigration. This tension has created significant implications for local communities, often at the expense of children's basic needs. In addition, the failure of Congress to craft immigration laws that consider the best interests of children has further compromised the safety and development of one of the most rapidly growing segments of the U.S. child population. Comprehensive immigration reform that includes a pathway to citizenship and addresses the wide range of challenges children face is the only way to ensure the stability and security our youth need to grow and thrive. This brief outlines some of the key consequences for children if immigration reform is not enacted this year.

To ensure that immigration reform addresses the needs of children, First Focus and the Women's Refugee Commission released a set of Children's Principles for Immigration Reform in February of 2013. These principles, endorsed by over 200 organizations, call for immigration reform that:

- **Provides a direct, clear, and reasonable pathway to citizenship.** Any pathway to citizenship must be open, affordable, safe, and accessible to children in need of status, including beneficiaries of Deferred Action for Childhood Arrivals (DACA), undocumented children under the age of 21, and unaccompanied immigrant children.
- **Protects and promotes children's fundamental rights.** Our immigration system must uphold children's constitutional rights and ensure equal access to critical public services, programs, and economic supports for children and their families. The protection of fundamental rights also includes ensuring all children receive legal representation before all immigration authorities and, for all unaccompanied children, the appointment of an independent child advocate from the moment of detention throughout the course of any immigration or other related court proceedings.
- **Ensures that enforcement efforts have appropriate protections for children.** In all enforcement actions, including those along the border, the best interests of the child should be a primary consideration and children must be given the benefit of the doubt during any investigation, inquiry or detention. There should be appropriate and accountable training policies and protocols for interacting with and screening children that reflects a humanitarian and protection-oriented approach, prohibits the use of force with children, and creates reasonable and safe conditions for children while in or released from the custody of all arms of the federal government.
- **Keeps families together.** All policies regarding admissibility, enforcement, detention, and deportation of children and their parents must duly consider the best interests of children, including enabling immigration judges to exercise discretion in admission and removal decisions based on the hardship to U.S. citizen and lawful permanent resident children. The immigration system must be updated by resolving current backlogs and ensuring family-based immigration channels are adequate for future migration without lengthy family separation.



1. WITHOUT IMMIGRATION REFORM, CHILDREN WILL CONTINUE TO BE SEPARATED FROM A PARENT DUE TO DETENTION OR DEPORTATION.

Current enforcement-only policies not only cultivate fear and anxiety in immigrant communities, they also tear families apart. Today, nearly two-thirds of adult undocumented immigrants have lived in the U.S. for more than ten years, and nearly half are parents to minor children.¹ In the two-year period from July 1, 2010 to September 30, 2012, the Department of Homeland Security (DHS) reported issuing 204,810 removal orders for the parents of U.S. citizen children, comprising nearly a quarter of all deportations in that period.² Using these statistics, a recent analysis by Human Impact Partners (HIP) estimates that over 152,000 U.S. citizen children were impacted by a parent's deportation in 2012 alone.³

It was my parents' only day off from working in the onion fields outside of town. I stood by the window as five trucks parked outside. Four people came from the sides. They came to my house, cuffed my dad and took him just like that. He was in the garden with my mother. I was angry. I tried to stop them, but they didn't. I asked them, 'why did it have to be my dad?' They didn't respond. —Adrian, Yakima, WA.⁴

Children who are separated from a parent due to their deportation face significant consequences, including the disruption that comes with relocating to a country they may have little knowledge of or remaining in the U.S. in the care of another parent, relative, or friend. In some cases, children may unnecessarily enter the U.S. child welfare system and face the risk of permanent separation from their family. A recent

study by the Applied Research Center estimates that 5,100 children with a detained or deported parent currently live in foster care.⁵ Research also demonstrates that separation from a parent due to detention or deportation harms children's mental and physical health, academic performance, and economic security.⁶ Even the simple fear of possibly losing a parent can lead to high levels of stress and anxiety in children, particularly in communities that have seen growing levels of collaboration between local police and federal immigration agents.⁷

If deportations continue at current levels, recent research findings predict that each year:

- An estimated 43,000 U.S. citizen children will experience a decline in their health status as a result of the loss of a parent's income.⁸
- Approximately 100,000 U.S. citizen children will suffer symptoms of post-traumatic stress disorder.⁹
- 83,000 mixed-status households will fall into poverty and 125,000 children will experience hunger and malnutrition.¹⁰
- 3,000 more children in the child welfare system will face the risk of permanent separation from their parent due to a parent's detention or deportation.¹¹

Under current immigration law, judges have limited discretion to consider hardship to minor children when making decisions regarding a parent's removal or admissibility.¹² And despite efforts by Immigration and Customs Enforcement (ICE) to exercise discretion in cases of parents and legal guardians, parents have continued to be detained at high rates due to laws that require the "mandatory detention" of certain immigrants, many of whom are parents.¹³ It should be noted that ICE has implemented policies to better protect the rights of parents in detention, including the recent "parental interest directive" which has the potential to reduce the number of children entering the child welfare system and improve the likelihood that a child in foster care can reunify with a detained or deported parent.¹⁴ Yet, only immigration reform that provides parents with a path to citizenship can definitively put a stop to the deportations that are needlessly tearing families apart.



2. WITHOUT IMMIGRATION REFORM, UNAUTHORIZED IMMIGRANT YOUTH GROWING UP IN THE U.S. WILL CONTINUE TO FACE AN UNCERTAIN FUTURE.

Currently, it is estimated that 1 million children under the age of 18 are growing up in the United States without formal immigration status and under arguably harsher enforcement practices than we have seen in recent times.¹⁵ These children and a growing number of young adults who have been in the U.S. since childhood are often referred to as "DREAMers" after the legislation that would provide them an earned path to citizenship. However, while a great number of these DREAMers have achieved academic success despite the odds, a large share of them continue to confront steep barriers to educational attainment that detour and sometimes derail their academic pursuits.

Without the ability to legalize their immigration status undocumented youth face uncertain educational futures as their constitutional right to attend school does not extend beyond high school. While federal laws do not expressly prohibit these youth from attending college, their legal exclusion from financial aid and a host of federally funded programs to assist low-income students makes college attendance and persistence difficult.¹⁷ In addition, a handful of states have excluded undocumented youth from entry into their public universities and the ability to pay tuition at in-state rates. These barriers to access are often coupled with mounting responsibilities to make financial contributions to their struggling families. Taken together, these external and internal factors make a college education less attainable.

Daniel is 19 years old, living in downtown Los Angeles with his mom and younger sister. His family came to the U.S. from South Korea when he was six. Over the years, Daniel's mom struggled to make ends meet but worked very hard so her children could have a better future. During Daniel's sophomore year of high school, his mom suffered a back injury at work that severely curbed her work hours. Daniel immediately pitched in, finding a job at an auto body shop. The work was difficult at first, but the money he earned helped pay the rent and the bills. He started missing school to take on extra hours, eventually leaving altogether. Daniel is thankful he has been able to help take care of his mom and sister, but the long hours at work have taken him far away from school and his dream to be an architect.¹⁶

Research has also pointed to a disturbing link between undocumented immigration status in adolescence and challenged mental and emotional well-being.¹⁸ Through their experiences in K-12 schools and their communities, many DREAMers feel as though they belong, but seeing friends move forward while they must wait is difficult for them to reconcile. Their status also carries a stigma that compels them to keep secrets from close friends and teachers, and thus avoid critical networks of support.¹⁹ Additionally, many fear that revealing the truth about their status may put their parents or other family members at risk of detention or deportation.²⁰

However, many of these youth are now eligible to apply for the Deferred Action for Childhood Arrivals (DACA) program, an initiative introduced by the Administration in June of 2012 which provides certain DREAM Act-eligible youth with a renewable two-year reprieve of deportation and the ability to obtain social security numbers and work authorization. In just one year, the policy has yielded tremendous results, providing hundreds of thousands of young people with relief from the constant threat of deportation and the ability to pursue their academic and career goals. As of August 2013, over 560,000 have applied for DACA and over 455,000 applications have been approved. According to initial findings from the National UnDACAmented Research Project (NURP), approximately 60 percent of DACA recipients surveyed have obtained employment, more than half have opened their first bank account, more than one third have obtained their first credit card, and over 60 percent have obtained a driver's license.²¹



While the DACA program confirms the numerous benefits of providing young people with the opportunity to fulfill their potential, the program remains only a temporary and partial solution that excludes many of the undocumented population, including young parents and out-of-school youth, who are unable to meet its age or education requirements. Without immigration reform that provides an accessible path to citizenship for undocumented youth, hundreds of thousands of DREAMers will continue to face an uncertain future and suffer the consequences of stress and anxiety associated with growing up without legal immigration status.

3. WITHOUT IMMIGRATION REFORM, CHILDREN LIVING IN MIXED LEGAL-STATUS FAMILIES WILL BE AT RISK OF FALLING INTO POVERTY AND SUFFERING POOR HEALTH OUTCOMES.

Currently, 5.5 million children, 4.5 million of whom are U.S. citizens, live in mixed-status families with one or more undocumented parent.²² Recent studies suggest that a parent's undocumented status may have adverse effects on their child's development and education.²³ In addition to the stress caused by a parent's deportation or the constant threat of deportation, mixed-status families also face higher rates of poverty while cut off from safety net programs designed to support low-income working families.²⁴

Children in mixed-status families are more likely to live near or below the federal poverty level, with average household incomes of less than \$38,000.²⁵ Undocumented parents are often subject to poorer working conditions and are more likely to earn below the minimum wage, yet their undocumented status impedes them from accessing income supports that could help lift their families out of poverty.²⁶ Long work hours and multiple shifts may also cause them to spend more waking hours away from their children which can also have an impact on child well-being.²⁷

Child Poverty Rate in Mixed Status Families and with U.S.-born Parents, 2010



Sources: Donald Hernandez and Jeffrey Napierala. *Children in Immigrant Families: Essential to America's Future* (New York, NY: Foundation for Child Development, June 2012)

Furthermore, despite the fact that a majority of the children in mixed-status families are U.S. citizens and therefore eligible for income-based safety net programs, they are less likely to use the Supplemental Nutrition Assistance Program (SNAP) and the Children's Health Insurance Program (CHIP) than children in native-born families.²⁸ Likewise, children in mixed-status families are under-enrolled in center-based child care and other early childhood programs. This underutilization of services is often a result of undocumented immigrant parents' lack of access to information. In addition, the fear of authorities causes undocumented

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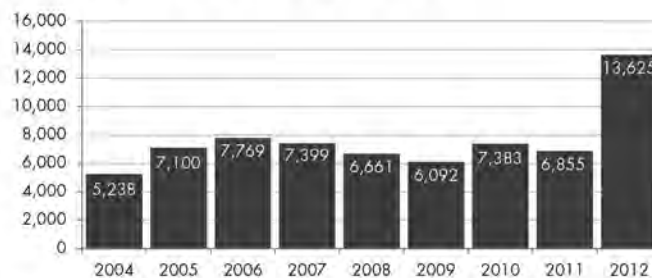
parents to forgo critical learning opportunities and services for which their children are eligible, particularly when services require several forms of identification, proof of employment, or proof of earnings.²⁹ As a result, children's early cognitive development and long-term health and academic outcomes may be compromised.

While many immigrant families make the long journey to the U.S. to provide their children with a better life, a parent's undocumented status creates significant challenges. Comprehensive immigration reform provides an opportunity for undocumented parents to earn their citizenship and better meet their children's needs.

4. WITHOUT IMMIGRATION REFORM, VULNERABLE UNACCOMPANIED IMMIGRANT CHILDREN WILL CONTINUE TO LACK LEGAL REPRESENTATION BEFORE IMMIGRATION COURT AND FACE THREATS TO THEIR BASIC HUMAN RIGHTS.

Children who come to the U.S. alone from other countries, also known as "unaccompanied immigrant children" represent a particularly vulnerable segment of the child migrant population. Thousands of these children undertake the long, dangerous journey to the U.S. each year in search of refuge, opportunity, and sometimes reunification with family members. While there are numerous reasons why children choose to migrate alone, increased levels of gang violence and poverty in Central America in recent years has contributed to an unprecedented number of unaccompanied children entering the U.S.³⁰ In fact, the Office of Refugee Resettlement (ORR) reported taking in approximately 14,000 children in fiscal year 2012.³¹

Number of Unaccompanied Children Referred to Office of Refugee Resettlement by Fiscal Year



Source: *The Time is Now: Understanding and Addressing the Protection of Immigrant Children Who Come Alone to the United States* (Washington, D.C.: Kids In Need of Defense, February 2013).

Unaccompanied children often endure significant hardship in their home countries and then throughout their journey to the U.S. As minors, they are particularly vulnerable to physical and sexual abuse and are at increased risk of becoming victims of trafficking.³² Upon entering the U.S., they confront additional challenges when they encounter the complex U.S. immigration system. Despite their age, unaccompanied immigrant children are held to the same standard as adults before immigration court and are immediately placed into removal proceedings without guaranteed access to legal representation or a child advocate to protect their best interests. Furthermore, unaccompanied children may experience mistreatment at the hands

THE COST OF INACTION



of immigration agents and are often repatriated or released without adequate assessment of their safety and needs.³³

The treatment of unaccompanied children has improved significantly in recent years as a result of the transfer of their custody and care to the Department of Health and Human Services in 2002 and with the reforms of the 2008 William Wilberforce Trafficking Victims Protection Reauthorization Act.³⁴ Yet, U.S. immigration laws and policies still fall short of fully meeting the unique needs of this vulnerable child population. Comprehensive immigration reform presents an opportunity to provide unaccompanied children with the full range of protections they deserve, including guaranteed access to legal representation and child advocates as well as improved policies to ensure effective screening, service provision, and repatriation.

"Eduardo, 17, told us that he was crossing the desert on foot near McAllen, Texas, in a group of five when his group was stopped by Border Patrol. He was one of three youth in his group; the others were a pregnant woman and a guide. Eduardo told us that the Border Patrol agents grabbed his neck and shoved him, then used a taser gun on him and the other migrants, including the pregnant woman, before handcuffing them. Eduardo said that things 'were a little better' in the 'freezer,' but that Border Patrol agents continued with verbal harassment and insults, using emasculating words and slurs against their mothers. He told us that whenever he or others in his cell tried to speak up for their rights, agents started slamming the door aggressively to intimidate them."³⁵

CONCLUSION: INACTION IS NOT AN OPTION FOR OUR CHILDREN

Congress has the opportunity to improve the lives of millions of our nation's children by passing comprehensive immigration reform that addresses the full range of challenges that kids face. Reform that works for children must include a path to citizenship that will end the fear of a parent's deportation and enable parents to better provide for their families. Reform must also ensure that immigration laws reflect the interests of children by giving them the same standing as adults in hardship-based considerations and by ensuring immigration enforcement policies are carried out in a responsible manner that promotes family unity. Finally, reform must offer improved protections for vulnerable unaccompanied children who arrive in the U.S. without a parent to care for them.

The stakes for our children and for our country are too high. Each day that immigration reform is delayed means more children's lives are overturned. The time is now for immigration reform that protects our children and reflects our country's family values.

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Mr. GOODLATTE. The Chair recognizes the gentlewoman from Washington, Ms. DelBene, for 5 minutes.

Ms. DELBENE. Thank you, Mr. Chair.

Secretary Johnson, thank you, for being here today. I want to take a moment and thank you and FEMA Administrator Fugate for traveling to Oso, Washington, the site of a massive landslide in my district that tragically took the lives of 43 people. I think you will agree, it is impossible to describe the scale of what happened without being able to be there to see it, and I appreciate you coming out.

The support of the Department through FEMA assistance has been very critical to everyone there. And as we continue with the recovery efforts, I look forward to continuing to work with you and FEMA to make sure that we have all the Federal resources available to support the communities of Oso and Darrington and Arlington as they continue in this long rebuilding process. So thank you again.

I want to turn to the issue of immigration policy, which is particularly relevant in my district because we have the border with Canada, the northwestern border with Canada. Under Federal law, right now CBP officers have the right to stop and conduct warrantless searches on vessels, trains, aircraft, or other vehicles anywhere within a reasonable distance from an external boundary of the United States.

Currently, Federal agents from CBP operate in a 100-mile zone drawn from any land or sea border, and this distance was established by regulation over 60 years ago. And while this may be sensible in some areas, especially in the southern border, in Washington State we have seen the Border Patrol set up checkpoints that disrupt commerce and hassle residents. I am particularly concerned about racial profiling complaints that we have received during vehicle stops. And I want to point out that last September in Washington State the Border Patrol reached a settlement agreement in a lawsuit alleging that the agency was engaging in discriminatory conduct in its stops.

As a review of the Department's immigration policies moves forward, I'd ask you to take a close look at this. We need to provide our Federal officers with the tools they need to keep our borders safe and also keep our Customs and Border Patrol agents focused on their mission near the border. And so I wanted to ask for your commitment to review the 100-mile zone, whether this is a reasonable distance from the border, in particular for the northern border.

Secretary JOHNSON. Yes, I will take a look at that. I will also take a look at our enforcement activities generally, at sea and elsewhere. It is a topic that I'm interested in as the head of this agency, as a lawyer, as a former prosecutor.

I also want to comment on what I saw when I was in Oso. I think all the Members of the Committee should appreciate the remarkable community effort that we saw the day we visited there. Private citizens, local law enforcement, Federal law enforcement, State law enforcement, and just neighbors who had been at the site of the mudslide for like 2 weeks with no sleep trying to help their neighbors, trying to find evidence of their loss. It was a really remarkable effort. And so I just wanted to note that as well.

Ms. DELBENE. Thank you.

Secretary JOHNSON. And I hope that your constituents are in a better place as a result, and please send them my regards.

Ms. DELBENE. Thank you, I will.

Also, on Sunday The New York Times reported that, even as the Federal Government cracks down on undocumented immigrants and forbids businesses to hire them, it's relying on tens of thousands of immigrants each year to provide essential labor, usually for a dollar per day or less at detention facilities. And in Washington State, at the Northwest Detention Center in Tacoma, a privately run detention facility, detainees led a hunger strike recently to protest their conditions, which included concerns about their severe undercompensation for the labor they provide to keep these facilities running and without protections afforded to other workers.

The vast majority of ICE detention facilities are operated under contracts with private prison companies and county governments. Given that, is there any statutory or regulatory impediment that would preclude DHS from requiring these contractors to pay wages to detainee workers that are higher than a dollar per day?

Secretary JOHNSON. As I mentioned a moment ago, my understanding of the program is that it is on a voluntary basis. But I am concerned about conditions of confinement at our facilities. This is something that I have spoken to you and Adam Smith about, in particular the one in Washington State. I sent a group from my front office out a couple of weeks ago to visit this facility when the hunger strikes had started there and I intend to visit it personally myself, along with other detention facilities. In terms of the law and the legal requirements, that is something I would want to look into.

Ms. DELBENE. Thank you, I would appreciate it. Because I have met with individuals who were released from the detention center in Tacoma and they said that folks were put in solitary confinement for work stoppages, failing to show up to cover shifts. And so clearly that does not describe a voluntary scenario. But compensation has been important when they feel like they haven't had adequate food and they need to work to get enough money to buy things from the commissary and a dollar per day does not help them out very much. So I would appreciate your feedback on that going forward.

And I yield back. Thank you, Mr. Chairman.

Mr. GOODLATTE. The Chair thanks the gentlewoman and recognizes the gentleman from Texas, Mr. Poe, for 5 minutes.

Mr. POE. Thank you, Mr. Chairman.

Thank you for being here. A few questions about several things. One, my friend from Texas, Ms. Lee, has made some comments and questions about the MEK and their status overseas. I have some further questions, but I'm going to put those in writing and will tender those to you and ask for a written response to myself and the Chairman.

Secretary JOHNSON. That's fine.

Mr. POE. The 36,000 that have been released, walk me through this. As a former judge I'd like to kind of figure out what their legal status is. What is their legal status in the United States now that they are released?

Secretary JOHNSON. Well, your Honor——

Mr. POE. Hey, I've been called worse. What is their legal status in the United States now that they have been released?

Secretary JOHNSON. Well, it depends. My understanding is that some of those 36,000 were lawfully in the United States. Others were not. Others were undocumented.

Mr. POE. The undocumented, what is their status?

Secretary JOHNSON. They are undocumented immigrants that are subject to removal.

Mr. POE. Excuse me for interrupting. I have 5 minutes. So they are technically illegally in the United States?

Secretary JOHNSON. Those who were undocumented, who were convicted of a crime. Now, there are all sorts of variations on this. We are talking about a class of 36,000 people.

Mr. POE. I understand.

Secretary JOHNSON. But if you are undocumented and you are here and there is no special status, there is no special program——

Mr. POE. So you're illegally in the——

Secretary JOHNSON [continuing]. You're not DACA, you're here illegally.

Mr. POE. Okay. The ones that were released that are undocumented that are now illegally in the United States again, did they get work permits?

Secretary JOHNSON. Do they have what? Sorry.

Mr. POE. Did they get work permits when they were released from custody? After being released from custody, they are now illegally in the United States again, did they get a work permit?

Secretary JOHNSON. I couldn't say categorically one way or the another. I'd have to know each individual case.

Mr. POE. Of the 36,000, did any of them get work permits?

Secretary JOHNSON. I don't know the answer to that, sir.

Mr. POE. Will you find out the answer to that question?

Secretary JOHNSON. We will try to find the answer out, yes, sir.

Mr. POE. Just roughly. You don't need to go through all 36,000. Just roughly, percentage-wise, I'd like to know that.

So let's take the ones that were undocumented. They are released. If they are rearrested for something, some other crime, then they are back in the status, they are back in jail again, and they go through the process again. Is that correct? In other words, they're not given some kind of stay out of jail free card now they have been released, talking about the undocumented ones.

Secretary JOHNSON. I agree generally with that, yes, sir. That should not be the case.

Mr. POE. Okay.

Secretary JOHNSON. Correct. If you are released under some conditions and you commit a crime, then that obviously changes the circumstances and somebody needs to reevaluate whether you should be running around on the streets. Correct.

Mr. POE. My understanding is your Department has the authority, obligation to report to the State Department those countries that do not comply with repatriation. In other words, a person commits a crime in the United States, they are a foreign national—forget whether it is legally or illegally—but they are foreign national, they go to prison, they are ordered deported back to where they

came from when they get out of prison, and countries don't take them back. Why would they? They have enough criminals of their own.

The law says under some circumstances, after you make a recommendation to the State Department, that those countries can lose visas. Do you know of any time that that has happened in recent years, where that has actually been made, that somebody won't take them back—China is a good example of those that don't take them back, there are other countries, Vietnam—where they refuse to take them back and that country lost diplomatic visas or any kind of visas because of their failure to take it back?

Secretary JOHNSON. I know that there was a case several years ago. I've forgotten the country.

Mr. POE. Grenada, I believe it was.

Secretary JOHNSON. I'm sorry?

Mr. POE. Grenada or Granada. One of those two.

Secretary JOHNSON. It was a country, I've forgotten which country. But I know that that occurred several years ago.

Mr. POE. Would you get us an accurate report on that, when the last time that actually occurred where the recommendation was made?

Secretary JOHNSON. Yes.

Mr. POE. It seems to me that this problem is going to continue when countries don't have any sanction, punishment if you will, for failure to take back their lawfully deported criminals. And myself and others on the other side have legislation to try to fix this problem.

I have other questions besides the MEK, but I am going to yield back my time to the Chairman. Thank you.

Secretary JOHNSON. Thank you.

Mr. GOODLATTE. The Chair thanks the gentleman, recognizes the gentleman from Illinois, Mr. Gutierrez, for 5 minutes.

Mr. GUTIERREZ. Thank you so much, Mr. Chairman.

And welcome, Secretary Johnson.

I guess I'd like to first of all start out by saying that I am disappointed, saddened, that you are not going to announce in the coming weeks. The President said that he had instructed you to do a review and to humanize our deportation processes in the next 90 days. So I was waiting for a couple of weeks to give you time to finish that review. I want to make that clear.

I was in Richmond, Virginia, yesterday. I wish my colleagues on the other side of the aisle had been in Richmond, Virginia, with me. They would have met a woman who has a GPS ankle bracelet, two American citizen children. And I assure you, because of the ankle bracelet you might have thought of her as a criminal, I saw a mom. I saw a mother of two American citizen children. And she said, please help me. And I'm going to help her. And I hope you do, too, Mr. Secretary, continue to help people like her from this broken immigration system.

I met three other women there—and there were reporters that come from Washington, D.C.—and one after another they told me about their broken families. We met a young woman, beautiful young woman, 18 years old, been her since she was 6, spoke in two languages. Clearly the United States is their home.

And so I simply say to my colleagues on the other side of the aisle, I hear you. You want to talk about law and order and law and order and law and order. And I'm for law and order, but I'm also for compassion and justice. And we can find a way where you can have your law and order, and I think we can find a way where we can have justice and compassion, too. People make mistakes. There is a broken immigration system. We should find a way.

The day before that, last Friday or last Saturday, I was in Riverside with Takano, and the day before that I was with Loretta Sanchez on Friday. That's how I spent my Memorial weekend, going and visiting. And everywhere there was the cry, Mr. Secretary, from people being deported, from families being devastated, from a community saying get the work done.

So I wanted to simply say to my colleagues, look, we don't have to do it the way the Senate says, but I think we have to do it.

And let me just stay this, Mr. Secretary. While I'm disillusioned, I'm conflicted, too, because I think it is a pretty grand gesture on the part of the President of the United States, I think, in my opinion, it is a pretty grand gesture on his part to say no to me, to say no to those mothers in Richmond and that I met over the weekend in Riverside, to say no to millions of people who support him, voted for him, cherish him, love him, and have protected him, for him to say no to us because he wants to say yes to you, because he wants to reach an agreement with you. I think that is a pretty grand gesture, especially when I have seen the kind of disdain that some Members on the other side of the aisle have shown for him. I think it is a pretty grand gesture.

And my point is I, like the President of the United States, want to work with you. I respect that you are the majority party in the House of Representatives and therefore get to dictate how it is things proceed. But I beseech you that there has got to be a way that we find some commonality.

And I want you, Mr. Secretary, to understand that I want to be supportive. When you guys talk about criminals, criminals, criminals, you think we like criminals? I want to find a seamless process in which you commit a violation of the law and if you are an immigrant in this country, you pay the price here and you are seamlessly deported from the United States of America. I don't want them here either.

But the only way we are going to reach that is if we fix the system completely, because, unfortunately, when you talk about felonies, that they are felons, it is a felony to reenter the United States of America once you have been deported. But who on the other side would not reenter this country to regain your relationship and your love with your wife and your children? Which one of you would not reenter illegally this country? Every one of us would.

I've had dinner, I've sat down with Members of the other side. I know how much you love your wives and your children. I know how much you cherish your families. I know what you would do and I think you know what I would do. So let's simply find a way where we can find law and order and some compassion.

And lastly I just want to say this. Mr. Secretary, I'm so happy this is the first hearing. I hope to have many, many more in which I actually ask you questions. But you know what, Mr. Secretary,

look, maybe you don't need my advice, but I know you are going to be just fine as Secretary because you come from a great family tradition. And I know one day you're going to see your grandpa again and he is going to be very proud of when you were Secretary of Homeland Security. Thank you so much for being with us this afternoon and this morning.

Mr. GOODLATTE. The Chair thanks the gentleman.

Recognize the gentleman from Utah, Mr. Chaffetz, for 5 minutes.

Mr. CHAFFETZ. I thank the Chairman.

And, Mr. Secretary, thank you for being here. Have you had an opportunity to meet with the president of the ICE officers union?

Secretary JOHNSON. No, I have not.

Mr. CHAFFETZ. Will you meet with him? Will you meet with him?

Secretary JOHNSON. I would like to. I would like to meet with the president of that union. I would like to meet with the president of AFGE.

Mr. CHAFFETZ. Okay.

Secretary JOHNSON. I would like to meet with other labor leaders.

Mr. CHAFFETZ. I hope you have a chance sooner rather than later to meet with the ICE officers, and particularly their labor union.

Secretary JOHNSON. I just committed to do that on TV.

Mr. CHAFFETZ. I know. I appreciate it. That's why I said I do appreciate it.

Operational control of the border. I don't think that's unreasonable to ask. What's your understanding, what percentage of the border do we actually have operational control of?

Secretary JOHNSON. We don't exactly compute it that way. We have got a fairly sophisticated analysis that demonstrates on the southwest border, for example, where we have enough assets that we feel that we have got pretty good situational awareness, where in the more remote areas we have other assets, surveillance assets, but we don't have as much boots on the ground, we feel like we've got a—

Mr. CHAFFETZ. I'm sorry. Time is so short here. You evidently wrote a letter to Senator Durbin. You said, "I do not believe that deportation quotas or numeric goals are a good idea." Can you explain to me why you don't think numeric goals are a good idea?

Secretary JOHNSON. Because I think that the analysis into what constitutes a secure border requires a more sophisticated approach. It's not just the number of attempted crossings but who's crossing. Where are they from? Are they drug dealers? Are they recidivists? Are they criminals? I think there's a more sophisticated analysis that goes into what constitutes border security.

Mr. Chaffetz. So where they're from and if they're a criminal or not—

Secretary JOHNSON. And the chief of the Border Patrol agrees with me.

Mr. CHAFFETZ. You say the Border Patrol agrees with you?

Secretary JOHNSON. Yes.

Mr. CHAFFETZ. I just don't understand. We all try to look at the same set of metrics. You're saying that metrics aren't necessarily a good idea, and it depends their intent on crossing the border as to whether or not to actually have operational control. Explain that

to me a little bit more. I don't understand that. If you're saying we have to look at their intent, where they're from, if they're criminals. So it's okay if they don't have bad intent, but it's not good if they have evil intent?

Secretary JOHNSON. I believe metrics are very important, but not just one metric. I don't believe that it is as simple as one statistic like effectiveness rate. I think that there is more that should go into what constitutes a secure border, and we have that analysis—

Mr. CHAFFETZ. Is that something you can share with us?

Secretary JOHNSON [continuing]. And I think it needs further refinement.

Mr. CHAFFETZ. Is that something you can share with us? I'd love to see what your version of that is, but I haven't seen that.

Secretary JOHNSON. I've had that conversation with other Members of the Congress. I'm happy to have it with you, sir.

Mr. CHAFFETZ. Thank you. And if there was some sort of document there, I would sincerely appreciate it.

Biometrics. You said, quote, and this is during your Senate confirmation, "Biometric exit is in my judgment the gold standard. It's a place that we eventually ought to get to," end quote. How do we get there? And I want to add another part of this because I think they do go hand in glove. You said that it is your goal, I believe in response to Mr. King, that if you had enough resources, then you would be able to detain and deport more people, correct? But you haven't asked for more resources, have you? In fact, your request for the number of beds is going down, isn't it?

Secretary JOHNSON. Well, in response to the question about biometric exit, I do believe that it is definitely a worthwhile goal, and it requires resources from Congress. We are operating and living in fiscally constrained times with huge national debt and a huge deficit. So we ask the Congress for resources. It's your prerogative to give us more. It's your prerogative to give us less.

Mr. CHAFFETZ. Do you have a plan to fully implement the entry-exit program? Do you have a plan to do that?

Secretary JOHNSON. I believe we do. I believe we have a plan to get to biometric exit, but it requires resources from Congress. It requires resources from you.

Mr. CHAFFETZ. And the resources that you talk about, if you're going to get tougher in this situation, people are here illegally, you said if we gave you the resources you'd make that happen. But you're not asking for more resources, are you?

Secretary JOHNSON. I have to prioritize where I think it's important. I believe it's important that we add resources to the southwest border, which is why we've asked for additional boots on the ground and we've asked for additional surveillance resources.

Mr. CHAFFETZ. But then why did you ask for less beds? But you've asked for less beds. Why less beds?

Secretary JOHNSON. Because the budget realities, we must prioritize.

Mr. CHAFFETZ. Mr. Chairman, that is, with all due respect, a nonsensical answer. It's just circular in its nature. You're asking for less resources, but you're saying if you had more resources you'd do your job better. And yet you're asking for less. And that

doesn't add up, Mr. Chairman. It's something we further need to explore.

Secretary JOHNSON. May I answer? May I be allowed to answer?

Mr. GOODLATTE. The Secretary definitely can answer the question.

Secretary JOHNSON. Thank you. We make a budget submission every year, as you know, Congressman. We're given a top line to work with. We're given budget reality to work with. And we have to make hard choices. And in my view, in my judgment, the priorities must be border security, without a doubt, particularly southwest border and some of the challenges we face there. We have asked for additional surveillance technology there. We have got to deal with cybersecurity. We have got to be mindful of the counterterrorism threat. We have got to provide grants for urban areas that face terrorist threats. We have got priorities.

Now, I would like to be able to fund every single thing that I believe is a priority, but Congress is only going to give me so much money, and so I've got to make hard choices. I'd like to have biometric exit. I think it would add to our homeland security. But over the years we have had to make some hard choices about prioritization. And so it's a goal. Unfortunately, we haven't been able to fund it as quickly as we would like.

Mr. CHAFFETZ. And, Mr. Chairman, I would just say when we have to release criminal aliens because there aren't enough beds, they've made a conscious decision to have less beds, and that's what I have a problem with. Yield back.

Mr. GOODLATTE. The Chair thanks the gentleman.

And, Mr. Secretary, biometric entry-exit is not a goal, it's the law. And we would like to see expeditious efforts made, and we actually think the cost of that is coming down with the development of new technology.

The Chair recognizes the gentleman from Georgia, Mr. Johnson, for 5 minutes for his questions.

Mr. JOHNSON OF GEORGIA. Thank you, Mr. Chairman.

Director Johnson, so what you're saying basically is you have to prioritize, and from the standpoint of your priorities, you believe that border security trumps the number of beds that the Congress would want versus what you've asked for in your budget. Is that correct?

Secretary JOHNSON. Not necessarily, sir. Detention of those who are dangerous is part of border security. It's part of homeland security, part of national security, part of border security. Every year we make an estimate of what we think we will need in terms of detention space. It's the Congress' prerogative to agree or disagree with that. But homeland security, border security, that's my mission, so that's my priority. Detention of those who are dangerous is very much part of that.

Mr. JOHNSON OF GEORGIA. Okay. Let me ask the question this way. I understand that we spend \$2 billion per year on immigration detention alone. The House Appropriations Committee is currently considering an appropriations bill for DHS that requires the Department to maintain 34,000 beds, while the President's budget only requested roughly 30,000 beds. Do you really need these extra

beds that the House Appropriations Committee says that they want to give to your Department?

Secretary JOHNSON. Well, our request, as I recall it, was for bed space for about 31,000 or so. Obviously that number could change based on current circumstances. So we're seeing a rise in illegal migration in south Texas, for example, which may require additional bed space. So it's a number that can fluctuate up and down. It's not necessarily a flatline number.

Mr. JOHNSON OF GEORGIA. You asked for roughly 31,000 and they now want to give you more than that, 3-plus-thousand more beds. How much does that cost?

Secretary JOHNSON. I don't have the exact number.

Mr. JOHNSON OF GEORGIA. All right. Well, let me ask you this. The 2011 ICE Performance-Based Detention Standards update existing ICE standards to address gaps in previous standards with regards to health and safety conditions. ICE facilities include private prisons as well as ICE-owned facilities, and they operate under widely varying detention standards.

According to reports from ICE, almost half of the average detainee population is not covered by the most recent PBNDS standards. What is DHS' timeline for ensuring that all facilities that hold detainees operate under the most recent standards, and why do we continue to hold detainees in facilities that cannot commit to complying with the most recent standards?

Secretary JOHNSON. I'd like to take that for the record and get back to you in writing, if I could. Sitting here, I don't know the answer to your question.

Mr. JOHNSON OF GEORGIA. All right. Detaining an immigrant costs over \$150 a day. Of course immigration detention is purely civil. That is, we're only detaining individuals in a civil proceeding to make sure that they show up for their court date. That's the reason why we're detaining them, not as criminal punishment. I understand that there are alternatives to detention such as ankle monitors or checking in by phone, which costs anywhere from 70 cents to \$17 a day. What plan does your Department have for expanding the use of these alternatives to detention?

Secretary JOHNSON. The Alternatives to Detention program that we have, and I know that it's part of our budget submission for this year, is in my judgment an important program and a reasonably effective program. I'm sure we could always do better, but I think we have become pretty sophisticated in terms of alternatives to detention and the conditions under which we release people to ensure their return. So I think Alternatives to Detention in general is an important program. Could we do better? I suspect we can, and so we have to continue to try to make improvements in that area.

Mr. JOHNSON OF GEORGIA. Thank you. With that I'll yield the balance of my time back.

Mr. GOODLATTE. The Chair thanks the gentleman and recognizes the gentleman from South Carolina, Mr. Gowdy, for 5 minutes.

Mr. GOWDY. Thank you, Mr. Chairman.

Mr. Secretary, you had a very distinguished career as an attorney, so I want to ask you some legal questions. What is the difference between prosecutorial discretion and the wholesale failure to enforce a category of law?

Secretary JOHNSON. Prosecutorial discretion is a prioritization. Now, somebody who is a low priority is not necessarily therefore beyond the reach of the law. They are a low priority, but they don't have any sort of status that says you hereby have amnesty.

Mr. GOWDY. Are there limits on the doctrine of prosecutorial discretion?

Secretary JOHNSON. I'm sorry?

Mr. GOWDY. Are there limits on the doctrine of prosecutorial discretion?

Secretary JOHNSON. DACA, as I understand it, is an act of prosecutorial discretion on an individual basis?

Mr. GOWDY. No, no, no. Are there limits on the theory of prosecutorial discretion? Are there any categories of law that the chief executive really actually has to enforce and this time we really mean it?

Secretary JOHNSON. As a lawyer I will tell you I believe there are. I think that there comes a point where something looks like a wholesale abandonment of the enforcement of the law versus prosecutorial discretion. So I would agree with that assertion and that proposition.

Mr. GOWDY. Well, there are at least three different categories of law. Law can forbid conduct, like the possession of child pornography. Law can require conduct, like registration with Selective Service. And law can even tell one branch you have to do something like sentence within these parameters. Does the doctrine of prosecutorial discretion apply to all three of those categories of law?

Secretary JOHNSON. DACA is an individual assessment of people who are eligible for DACA treatment, and then they have to go through a process of background check and so forth.

Mr. GOWDY. I'm not just asking about DACA. You were a prosecutor. Our Attorney General has concluded he doesn't like mandatory minimum, so they're no longer going to inform the grand jury or the sentencing court what the drug amounts are. I'm not talking about DACA specifically. I'm trying to determine whether there are any limits to this theory called prosecutorial discretion.

Secretary JOHNSON. I believe there are.

Mr. GOWDY. Give me a for instance. Give me a category of law where you can't rationalize due to a lack of resources your failure to enforce a law.

Secretary JOHNSON. Like I said, sitting here I'm not sure I can answer specifically your question in hypothetical terms, but I do believe that there comes a point when something amounts to a wholesale abandonment to enforce a duly enacted constitutional law that is beyond simple prosecutorial discretion. I'm agreeing with you in principle.

Mr. GOWDY. You mentioned in response to one of my colleagues' questions a lack of resources and a need to prioritize.

Secretary JOHNSON. Right.

Mr. GOWDY. Can the legislative branch prioritize for you what we think your enforcement mechanisms ought to be or the priorities of your Department? Does it only come from the executive branch or can the legislative branch say, we really want you to detain this category of alien and we really mean it?

Secretary JOHNSON. I think that's a good question. I think that there is a role for the legislative branch in making national priorities in how we enforce and prioritize the law. So, for example, if I may, Congress can ratchet up criminal penalties for certain things. That's an act of prioritization. I think that's an act of prioritizing, telling the executive branch where we want your priorities to be, and so there are enhanced penalties here.

Mr. GOWDY. But, Mr. Secretary, that enhanced penalty is meaningless if there's no prosecution. You would agree with me there. We can raise the statutory maximum on all crimes. If you mean to tell me the executive branch has the unfettered discretion not to enforce a category of law, what difference does it make what the statutory maximum is? Nobody's ever going to be prosecuted.

Secretary JOHNSON. That's not what I said.

Mr. GOWDY. No, but you cited something the legislative branch can do, which is raise the statutory maximum.

Secretary JOHNSON. Right.

Mr. GOWDY. What I'm trying to get at is what can the legislative branch do when we want—and I'm not talking about immigration right now, I'm talking about any category of law—if we really want the law enforced? I mean, this time we really mean it, Mr. President. We want you to enforce the law. What are our remedies?

Secretary JOHNSON. I think that the legislative branch in general, whether it's the enforcement of immigration laws, the enforcement of criminal laws, or how we conduct counterterrorism operations, needs to be careful not to intrude into the discretion that the executive branch should normally have. You cannot, with all respect, micromanage certain functions that the executive is charged with carrying that out. I know from experience, whether as an AUSA or as the General Counsel of the Department of Defense responsible for signing off on the legality of specific military operations, that the legislative branch can and should and has the prerogative to set the broad parameters for national policy, and the executive should be given a certain amount of discretion, based on existing circumstances, to implement and enforce those laws. And there is a line between those two that I think is probably a little difficult to articulate, but I believe both branches have a role in that process.

Mr. GOWDY. I'm out of time. But, Mr. Secretary, I will say this in conclusion. Our politics may differ. I don't have any idea, I don't know you well enough to know. But you're a former prosecutor, and there are other former prosecutors on this Committee, and the beauty of this country is even if our politics differ, we still respect the rule of law.

And we are playing with the foundation of this Republic when we decide selectively which laws we're going to enforce due to political expediency. That transcends politics, and it begins to impact the foundation of this Republic. And I would urge you to help me find where that line is between prosecutorial discretion and just deciding you don't like to enforce a law.

Mr. GOODLATTE. The Chair thanks the gentleman, and recognizes the gentlewoman from California, Ms. Chu, for 5 minutes.

Ms. CHU. Yes, Congresswoman Lofgren?

Ms. LOFGREN. Thank you for yielding.

I just wanted to point out that, in fact, Congress has identified the priority in the appropriations language for 2013. We prioritized the removal of criminal aliens.

And I thank the gentlelady for yielding and yield back.

Ms. CHU. Thank you.

And thank you, Secretary Johnson, for meeting with the Congressional Asian Pacific American Caucus. We had a very fruitful dialogue on the deportation policies, and I appreciate that.

I would like to ask questions about removals without due process. And I know that those on the other side of the aisle are saying that there's too much prosecutorial discretion, but actually I believe that the opposite is true, and that is immigration agents now deport most people without ever bringing them before an immigration judge. In 2013, more than 70 percent of all people that ICE deported were subject to summary removal procedures which bypassed immigration courts entirely and lacked fundamental due process. For these hundreds of thousands of individuals, immigration agents are the jury and the judge. And, in fact, deportation decisions are made so quickly that there's no time to see if a person merits discretion or needs protection.

Take the case of Gerardo Hernandez Contreras from San Diego who entered the U.S. when he was 15 years old and later married a U.S. citizen and had two U.S. citizen children. In 2012, he was driving to pick up ice cream for his kids when he was pulled over by the San Diego Police Department for talking to his wife on his cell phone while driving. So the immigration officials were called to the scene, and just 1 day later he was deported to Mexico, a country that he had not lived in for a decade.

He appears to be a prime candidate for prosecutorial discretion. He had no criminal history, had lived in the country for over a decade, had U.S. Citizen family. But instead he never had the opportunity to present this case to a judge. He was pressured by Immigration to sign a voluntary return form and was not informed of the consequences of doing so. By signing the form, he waived the right to a hearing and consented to removal from the U.S. and now faces the 10-year ban before reentering. Because the Morton memo does not apply to Border Patrol, they are not required to screen individuals prior to deportation to determine if they are eligible for discretion, and so he slipped through the cracks.

So, Mr. Secretary, it's of great concern to me that those like Mr. Hernandez Contreras who lives within 100 miles of the border and are apprehended by Border Patrol are subject to less due process than those apprehended by ICE in the interior where ICE is required to screen for prosecutorial discretion. And do you believe that the Department's enforcement priorities should require the Border Patrol to at least screen individuals for prosecutorial discretion?

Secretary JOHNSON. Well, I can't comment on the specific case, but in general I believe that in the process of prioritization CBP officials should evaluate whether a case is a priority 1, 2 or 3 all along the way. As I commented earlier, however, I think that there are special considerations at the border, that you can't ask a Border Patrol agent when he's watching somebody crossing the Rio Grande to engage in that sort of balancing and discretion. So it's

normally something that's done in the interior or once somebody has crossed into this country illegally.

I do think that we should, and this is one of the things I'm seeking to do, I think we should do a better job of providing our people with clearer guidance about what our priorities should be and spending the time to educate and train the workforce on those guidelines so that they understand them, they understand what's expected of them, and they are truly making the effort to prioritize.

I don't think we've spent—when I say “we,” I mean the leadership of my Department—has spent enough time talking to the workforce as I've tried to do over the last several weeks, as I've conducted my review, and I've spoken to ERO leadership, as well as a number of people in the workforce. And Congressman Forbes cited an example earlier in Fairfax, Virginia, where I had a session with a number of people on the front lines in the workforce enforcing our immigration laws.

So I think an important element of the answer to your question is better communication between leadership and the front lines and more effective and clearer guidance.

Ms. CHU. Thank you. I yield back.

Mr. GOODLATTE. The Chair thanks the gentlewoman.

Recognize the gentleman from Texas, Mr. Farenthold, for 5 minutes.

Mr. FARENTHOLD. Thank you, Mr. Chairman.

Secretary Johnson, I serve on the Transportation Committee, so I also want to talk to you for a second about the TSA before I get into a more pressing issue. Currently the passenger fee associated for TSA screening is \$2.50 per enplanement with a maximum of \$5 each way. The Bipartisan Budget Act of 2013 increased that from \$2.50 to \$5.60 per one way, regardless of the number of enplanements.

Now, do I understand correctly that since 2001 your agency has implemented the underlying law so with the \$2.50 you maxed out at \$10 each way? So I guess it's \$2.50 for enplanement with a maximum of \$5 each way or \$10 for a round trip.

Secretary JOHNSON. I think that's right. Yes.

Mr. FARENTHOLD. Right. So my office is hearing some rumors that there may be a different way you interpret what we're doing. But given this precedent, it seems the correct thing to do is to look at the \$5.50 will max out at \$11.20 per round trip. Is that what you all are planning so we can put some of these rumors to rest?

Secretary JOHNSON. Well, I don't want to get this wrong. I know I've looked at this issue. I would need to refresh my recollection on how we propose that the fee be calculated, because I want to be sure I get this right, Congressman, and I'm happy to get back to you on that.

I do know that one way or another we need to fund our activities.

Mr. FARENTHOLD. Absolutely. It's a billion dollar expense to the flying public, but it falls I think under the category of a user fee rather than a tax. If you don't fly, you don't pay it.

Secretary JOHNSON. One way or another we need to pay for the executive branch's activity.

Mr. FARENTHOLD. Well, if you could just let me know just to make sure that there's no intent to go beyond what I think Con-

gress intended was \$11.20 per round trip max on that, kind of follow the same implementation.

But I want to get to something more important. You testified early on in your testimony, and there were a couple of questions about the issue we had with the increasing number of minor children that are crossing the border. In fact, there are two facilities in the district that I represent that house those children, one in Driscoll, Texas, and one literally four blocks from my residence. And I've toured one of those facilities and spoken to the people, and they say they can't deal with the children fast enough, there are so many coming in. You mentioned that you went to a facility in McAllen that was overcrowded with children.

And your suggestion in answer to one of the questions of how we fix this is an ad campaign saying it's dangerous to cross the border illegally. And I'm concerned that that isn't enough. I think in a well-intentioned manner we have created an incentive for parents who are in this country, lawfully or unlawfully, to hire a coyote to bring their children across, let them get captured, and we deliver them to the parents at over a billion dollars, I think, last year expense. I think the numbers are—they're thousands. And I don't want to get the number wrong either. Do you think an advertising campaign really is going to be enough, or are there some policy changes that we need to make to solve this?

Secretary JOHNSON. No, clearly not by itself, sir, and I don't think I really got a chance to finish my answer to the question. Public messaging directly to the parents of these kids is an important aspect of it, but it's not the only answer clearly. I think that we have to do a better job of attacking the network, and I'm reviewing statistics recently—

Mr. FARENTHOLD. Well, my question, just real quickly, my fear is that as drug cartels who run a lot of these human smuggling operations are losing revenue, whether it's increased enforcement or legalization of marijuana in parts of this country, they're losing revenue, my fear is that these coyotes turn more into traffickers and either hold out for more money once the child is across the border or, worse yet, take those children into sex slavery and some form of human trafficking.

I want to give you an opportunity to fully outline what you propose because I really am concerned we are unintentionally incentivizing very, very dangerous conduct that has already cost the life of at least one child I've seen and will cost the lives of more.

Secretary JOHNSON. Going after the network is important, and we are increasing prosecutions of smugglers. I think smuggling organizations, as you've pointed out, are the key to this. Nobody free-lances across the southwest border that I've seen. They're all paying smuggling organizations to get them up the east coast of Mexico into South Texas and then into the interior of our country, \$3,000 or \$4,000 a head, or whatever the amount is.

So I think an important part of this is increased prosecutions of smuggling organizations, those engaged in this activity, many of whom can be found in the United States. And so I think that's part of it, and I think that there are other things that we need to consider that I'm considering this afternoon when I go back to meet

with my team on UACs because this is a problem that we have to address for a number of reasons, including the humanitarian reasons.

Mr. FARENTHOLD. Any way I can help, please let me know. I see my time has expired. I would like to spend some more time with you talking about it.

Mr. GOODLATTE. The time of the gentleman has expired.

The Chair recognizes the gentleman from Florida, Mr. Deutch, for 5 minutes.

Mr. DEUTCH. Thank you, Mr. Chairman.

Secretary Johnson, thank you for being with us today.

As you're aware, the House Appropriations Committee just released the text of the Homeland Security appropriations bill, which again contains the detention bed mandate, something that there's been a lot of talk of here today. And it says "that funding made available under this heading shall maintain a level of not less than 34,000 detention beds through September 30, 2015." What's the purpose of detention, Secretary Johnson?

Secretary JOHNSON. Public safety.

Mr. DEUTCH. And the purpose is, as I understand it, to ensure that compliance with immigration court proceedings is upheld. Isn't that correct?

Secretary JOHNSON. Those with immigration court proceedings, some are released pursuant to conditions, if we don't think they're a risk of flight and they're not public safety; but those who are considered to be a risk to public safety should be detained.

Mr. DEUTCH. That's not what I'm asking. The purpose for detention, first and foremost, is to ensure that these undocumented immigrants wind up appearing in court. Isn't that why we have it? Isn't that the basis for the system?

Secretary JOHNSON. That is one of the purposes, yes. We also need to pay attention to public safety, too.

Mr. DEUTCH. I understand that, and paying attention to public safety is exactly what law enforcement does. Are you aware of any law enforcement agency in this country, any other law enforcement agency that's required to hold a certain number of people every day?

Secretary JOHNSON. No.

Mr. DEUTCH. So why do we do it?

Secretary JOHNSON. The statutory requirement is beds, not people. A lot of people think it's people, but it says beds.

Mr. DEUTCH. Right. In fact, one of my colleagues on the Appropriations Committee made the point that the detention bed mandate, not only is it people, but it's meant to be people because it's meant to be a deterrent, because apparently he believes, some of my colleagues believe, that it is Congress rather than law enforcement that should enforce the law. How do you feel about that?

Secretary JOHNSON. Well, as the exchange I had with Congressman Gowdy reflected a few minutes ago, I think that a core function of the executive branch is to enforce the law, which includes prosecutorial discretion. That's something that I engaged in 25 years ago as a Federal prosecutor, and anybody else in this room who's been a prosecutor has done the same thing.

Mr. DEUTCH. And every law enforcement agency in America has the ability to make their own decisions, to exercise their discretion, except in this case where Congress has stepped in and has insisted, the interpretation of my colleagues, some of my colleagues here, is not yours, though it should be, but the interpretation here is that it means people. And the cost then is \$2 billion a year, \$2 billion a year that we spend, at a cost of \$160 per detained person per day, when there are alternatives that cost anywhere from 17 cents to \$18 per day. The average cost for alternatives to detention is \$5.94.

In this case, why shouldn't we let immigration officials do their job the same way we let law enforcement exercise discretion in every other place in our country?

Secretary JOHNSON. Well, look, don't miss understand me, please. There are lots of people in the removal system who should be detained, who should not be at liberty. We make estimates every year of what we think our detention bed space should be. Congress comes to their own number, and they give us their own number. And that's the back and forth we have every year.

Mr. DEUTCH. Right. But, Secretary Johnson, ICE detained nearly 500,000 people in 2012, it was a record number of detention, when there are alternatives. And so with these detentions and the interpretation that Congress has put forth, there is no discretion that can be utilized.

So my question to you is, instead of having this back and forth over how this should be interpreted, why do we have this requirement, this detention bed mandate, in law to begin with, why does it come through the appropriations process instead of through a debate about policy that should take place in this Committee, and shouldn't we through these alternatives to detention be working to save taxpayers' money while at the same time making sure that immigration officials can do their job? Why are we mandating this?

Secretary JOHNSON. Well, first of all, I think that's a discussion you should have with your colleagues.

Mr. DEUTCH. Secretary Johnson, I'm asking you. I don't believe we should. And I have had this discussion. And a lot of my colleagues can't understand why it is that when we spend so much of our time here talking about taxpayers' dollars and making decisions wisely and spending decisions wisely, that in this case we have a policy that benefits a certain group that costs \$2 billion a year and that it's a policy that we impose that we don't impose on any other area of law enforcement. It tears families apart. There are less expensive ways to do it. I don't believe we should have it at all. And I'm asking you whether you agree with me.

Secretary JOHNSON. Look, I think that there are a certain number of people in the system who should be detained.

Mr. DEUTCH. We agree. We absolutely agree with that, Mr. Secretary. I'm talking about all of the others that could be released on a whole host of alternatives to detention which would save taxpayers' money, that would not put communities at risk, that would permit these people to move, to go back to their families, still ensuring that they're going to show up in court, which is what the detention system is meant for.

Secretary JOHNSON. If I could just be permitted to finish my sentence?

Mr. DEUTCH. Please.

Secretary JOHNSON. There are some people who can and should be detained. Congress has got to allocate resources to enable us to do that.

I also believe that there are instances where it is not necessary, given the cost to the taxpayer, to detain people who are in the system, and therefore alternatives to detention is something that can and should be looked at and funded by this Congress.

Now, arriving at the right balance between what we devote to those who should be detained and those who can be released as an alternative to detention is a difficult job that we have to continually evaluate to achieve that balance that ensures public safety and maximizes the efficient use of taxpayer dollars. So that's what I am interested in doing and working with the Congress to try to achieve.

Mr. GOODLATTE. Time of the gentleman has expired.

Mr. DEUTCH. Unfortunately, Mr. Secretary, we're insisting on a mandate rather than engaging in that discussion.

Mr. GOODLATTE. Time of the gentleman has expired by over 2 minutes. And I would only add to the Secretary's comment that right now there are over 860,000 such people who are under deportation orders and who are not detained and have not left the United States.

The gentleman from North Carolina, Mr. Holding, is recognized for 5 minutes.

Mr. HOLDING. Mr. Secretary, in the Supreme Court's decision of *Kendall v. The United States*, the court stated that to contend that the obligation imposed on the President to see the laws faithfully executed implies a power to forbid their execution is a novel construction of the Constitution and entirely inadmissible. Would you agree with that?

Secretary JOHNSON. Without knowing who wrote it, I agree with that, yes, sir.

Mr. HOLDING. Good. You think the DHS has been living up to this Supreme Court decision?

Secretary JOHNSON. I believe that's my obligation as the head of the agency, and that's what I seek to do.

Mr. HOLDING. Good.

Now, in recent press reports I learned that DEA Administrator Leonhart was called onto the carpet by the Attorney General for apparently her desire or expression of wanting to enforce drug laws in the United States as they're on the books, and particularly the marijuana laws. And I was surprised that the Attorney General, chief law enforcement officer, would have a problem with another law enforcement officer wanting to uphold the laws of the United States.

So with that in mind, I was listening to your response to Mr. Nadler a little bit earlier today, and I was refreshed because he was asking you about the scanning of ship containers, and you said, well, that you had looked at it and it's a duly passed law, and being a duly passed law, that it is your job to enforce it. And you

echo that with my question about *Kendall v. The United States*, that it's your job to enforce duly passed laws.

So as you're doing the review in the Department for the President, to let the President know about enforcement priorities, if you were to do this review and come back and say, well, I've had various field hearings with the rank and file, the boots on the ground, I'm hearing from them. I've looked at the resources of the Department. I've looked at the challenges that we have. And in the interest of public safety, we have gang members coming across the border infiltrating our immigrant communities here, we have drug dealers coming across the border, we have child molesters, violent felons, we're picking them up, we're not able to detain them all. We have many tens of thousands that have been released, I've seen that. The deterrent effect of not enforcing the laws is terrible. We have now people lining up at the borders trying to get across the borders because they don't believe that we're enforcing the laws, I've seen that. And you tell the President, in talking to the rank and file, morale is down amongst our agents, they believe that their mission is to enforce the laws, they want to enforce the laws, they believe they're being inhibited from doing so.

So you make this review, and you come to the President and say, the laws are duly passed, and I believe it's my duty to enforce the laws, and that's what I intend to do, do you think, based on your experience with the President, that he will say to you, well, you're hired to do a job, confirmed to do a job, go do your duty, do your best to uphold your oath and enforce the law? Do you think he wouldn't have a different response of, well, what you're telling me doesn't really match with what I believe that the policies of the United States ought to be, and they don't match with my politics, and they don't match with what I'd like the law to be? So do you think the President, like the Attorney General, would call you on the carpet and have some concerns if you were to come back with a review as I described?

Secretary JOHNSON. That's a good question, and I appreciate the way you articulated it, because I've been not just the head of the department of our government, but the senior lawyer for the largest department of our government, and I've had occasions to make some really tough legal judgments over the first 4 years of this Administration in the conduct of our counterterrorism policies.

Let me answer the question this way. I am appointed by this President. My political loyalty is to him. I have a higher obligation to the law, to the Constitution and the laws duly enacted by this Congress, and I will not participate in something that I do not believe squares with my legal obligations, which are higher than any other obligation, except perhaps the obligations I owe to God, to conduct myself in this office. That's the oath I took. The district judge who swore me in, administered the oath to me, said, you're about to take an oath, your oath is not to Homeland Security, your oath is to the Constitution. And I believe that. I believe that very passionately.

So my highest obligation is to the law, and I think I have a pretty good understanding of the law as a lawyer, as someone who's been a government lawyer. And I conduct myself within the mainstream of legal interpretations of duly enacted laws by Congress

and the Constitution. That is at least how I've sought to conduct myself in public office, and I hope to continue to do so.

Mr. HOLDING. Thank you for your answer.

Mr. GOODLATTE. Thank you.

Before I turn to the gentleman from Florida, let me announce to the Members and to you, Mr. Secretary, that a vote series has begun. That vote series includes five votes. And we have probably time to get the gentleman from Florida, Mr. Garcia, and the gentleman from Florida, Mr. DeSantis, in before we have to go for that vote series, but then that's going to take us at least 30 minutes.

Mr. Secretary, what is your schedule? Are you able to return? Because we have several Members on both sides that want to ask questions.

Secretary JOHNSON. I have appointments this afternoon, sir, but I am happy to stay as long as you need me.

Mr. GOODLATTE. We will make you as comfortable as possible, and we will return promptly after the vote series, but we will get two more out of the way before we go, and that will save you some of the time.

So the Chair recognizes the gentleman from Florida, Mr. Garcia, for 5 minutes.

Mr. GARCIA. Thank you, Mr. Chairman.

Mr. Secretary, good afternoon. Thank you for your service. And I want to thank you for your ongoing review, as well as your willingness to meet with the different caucuses who are trying to pass and move forward on comprehensive immigration reform.

Mr. Secretary, we're coming on our second anniversary of the DACA program. Can you give a brief overview of how you think it's working.

Secretary JOHNSON. I'm sorry, what's that?

Mr. GARCIA. Can you give a brief overview on how you think it's working, the DACA?

Secretary JOHNSON. We have had something like 600,000 people enroll so far. It's a large number of people. I think our Department has done a pretty good job of enrolling those people and administering this program. And we're reaching a stage where we're going down the road of renewal, and it's not a big revelation, it's not a big secret.

And so I would anticipate that the DACA program will continue. I am interested in understanding the program better to see if there are ways that we can more effectively administer this program. But my general sense is that the program is working reasonably well.

Mr. GARCIA. Thank you. I recently met a young man in my district named Julio. Julio came to the United States from Honduras a month after his 16th birthday, after missing the DACA program by 1 month, just 1 month. After graduating from high school he worked construction, never thinking he'd be able to go to college. His parents didn't graduate high school. But he eventually was given the opportunity at a university in my area, Miami Dade College, and now Florida International University, where he has become a campus leader.

Julio is an asset to our community, but when he finishes college he's sort of done, his ability. Don't you think that allowing him to stay would be in the spirit of the DACA program?

Secretary JOHNSON. Is it within? Certainly there's a spirit of the DACA program that reflects the special nature of people who cross the border as children. I think in any program like that, that involves large numbers of people, you have to have cutoffs and deadlines and clear parameters. We can't have a case-by-case judgment made with respect to how we're going to administer this program for 600,000 people. So I think there needs to be clear guidelines, clear rules. But certainly the case you describe is within the spirit of what we're trying to achieve with the program.

Mr. GARCIA. Thank you.

On another note, jurisdictions throughout the country have expressed frustration and skepticism through the Secure Communities program, including Miami-Dade County formally refusing detainer requests. As part of your review, are you looking into this area?

Secretary JOHNSON. Yes, yes. I am very troubled by how this program is being administered and the reaction we're getting from a lot of governors and mayors, and I think we need to do a better job.

Mr. GARCIA. Mr. Secretary, again, thank you for your service. Thank you for your ongoing review.

I'll yield back balance of my time.

Mr. GOODLATTE. Thank the gentleman.

Recognize the gentleman from Florida, Mr. DeSantis, for 5 minutes.

Mr. DESANTIS. Thank you, Mr. Chairman.

Welcome, Mr. Secretary.

I was looking through this list of the 36,000 criminals who were released, and some of this stuff is really, really troubling when you look at serious, serious crimes—homicide, sexual assault, robbery, aggravated assault, domestic violence. I mean, do you agree just as a general rule that if somebody illegally enters the United States and they're committing crimes that endanger the life, liberty, or property of the American people, the response from our policy and our government should be that those individuals are sent back to where they came from, correct?

Secretary JOHNSON. Yes, yes.

Mr. DESANTIS. Okay. And so I noticed in the response that you sent to the Committee that there were certain numbers of criminals who were enumerated as having been released because of binding legal precedent. So, for example, there were 10 individuals released whose crimes were classified as homicide, willful kill, gun, and the reason according to the response was because you're only allowed to hold them for a certain amount of time. And I think in those situations it's because the parent country will not accept them back. Is that a fair guess as to why we would be releasing people who were out there mowing people down with a firearm?

Secretary JOHNSON. I know in many cases a person is released on conditions because we do not think we have the legal authority to continue to hold them.

Mr. DESANTIS. And you can't deport them? Is that the nub? I'm just trying to figure out—

Secretary JOHNSON. That could be one of the reasons, but I hesitate to give a broad categorization of 36,000 different—

Mr. DESANTIS. But are there certain instances where there are violent criminals who the host countries have not allowed us to return them? Has that, in fact, happened?

Secretary JOHNSON. That is probably the case.

Mr. DESANTIS. Okay. So my question to you is, have you notified the State Department that this is the case, because there's a statute, 8 U.S.C. 1253 delta, which basically says that upon notification the Secretary of State is supposed to order the consular offices in those foreign countries to discontinue granting visas until those countries are willing to accept back their foreign nationals.

So have you notified the Secretary of State that this has happened? And if not, why not? And if not, will you do so in the future?

Secretary JOHNSON. I'd have to check. I'd have to check.

Mr. DESANTIS. Okay. If you could do that that would be helpful because the statute imposes a duty on the Secretary of State. I think we'd maybe get some headway if we just were to comply with the laws.

One of the things I saw, there were over 15,000 convictions for DUI, and you see reports where there are illegal immigrants driving drunk and killing people. Yet, I was alarmed when I saw an anonymous ICE official state that two convictions for DUI simply aren't enough to warrant detention and removal. This is putting the American people's lives in jeopardy. It's a very serious offense.

Now, Chairman Smith wrote to ICE before you were DHS Secretary asking them to launch removal proceedings against illegal immigrants with prior convictions for drunk driving. So my question for you—and Secretary Napolitano I don't think responded affirmatively—will you honor former Chairman Smith's request and protect innocent American lives by detaining these individuals who have these multiple DUI convictions?

Secretary JOHNSON. Well, I hesitate to give a categorical response to individual cases without knowing the circumstances of the individual cases. In general, I believe that someone who represents a threat to public safety, who is removable, should be detained and removed.

Mr. DESANTIS. And that would include someone, you would say multiple convictions for DUI or repeat performer, that that person poses a threat to public safety?

Secretary JOHNSON. I generally regard a DUI as a significant misdemeanor.

Mr. DESANTIS. A question about U.S. citizens negatively affected by some of the Administration's policies. There was an article in The New York Times recently about the DACA program, and basically what they said was the Department had to devote so many resources to doing the DACA that these U.S. citizens are now seeing their wait times go if they want to bring in a foreign national who's a spouse or family member.

So my question to you is, do you find it troubling that legal immigrants and U.S. citizens who have simply been playing by the rules are suffering due to the Administration's desire to grant these benefits, which we can both agree were not statutorily mandated? This is administrative discretion, as you said. Does it bother you

that U.S. Citizens are getting the short end of the stick in some instances?

Secretary JOHNSON. My understanding is that that was a temporary phenomenon that abated after a period of time, and my understanding is that that is not the case now.

Mr. DESANTIS. So you don't think that that was good that that happened? You agree that there's a problem?

Secretary JOHNSON. I agree that those who are lawfully in this country who are seeking citizenship should not have to wait an unduly long period of time to obtain that. Yes.

Mr. DESANTIS. Very well. I yield back.

Mr. GOODLATTE. The Chair thanks the gentleman.

The Committee will stand in recess, and we will resume immediately following the series of votes.

[Recess.]

Mr. GOODLATTE. The Committee will reconvene.

I want to again express my thanks to Secretary Johnson for his forbearance in giving us as much time as he has today.

We will turn now to the gentleman from Pennsylvania, Mr. Marino, who is recognized for 5 minutes.

Mr. MARINO. Thank you, Chairman.

Welcome, Secretary.

My notes aren't with me; so, I am going to do the best that I can as far as asking you some questions.

You made—and I apologize. You were at a press conference or you were at an event that you made a comment concerning that people here in this country—and I don't know if you referred to it that illegals here deserve to become citizens.

Do you recall that?

Secretary JOHNSON. Say that again. I am sorry.

Mr. MARINO. That the illegals here—now, I am not sure if you used the word “illegals,” but the people who are here undocumented deserve to become citizens because a lot of children grew up here.

Do you recall that statement?

Secretary JOHNSON. I don't think that's what I said. No. No.

Mr. MARINO. It was in the media, and I take with a pound of salt what I read in the media.

So my question is, though: What type of illegals that are here—and I don't mean—I don't want you to do a broad category—should go back? Could you give me an example of people that we do not—that should not be here if they are here illegally.

Secretary JOHNSON. Well, under our existing enforcement priorities, those who are here undocumented who are convicted of felonies, convicted of serious misdemeanors, convicted of multiple misdemeanors, who are repeat reentrants, who are fugitives from a final immigration order are considered priorities for removal.

That is where we devote our resources in the removal process. So, in general, what we say is those who represent threats to border security, national security, public safety.

Now, there is a lot of devil in those details, obviously.

Mr. MARINO. Sure.

Secretary JOHNSON. And you didn't exactly ask me this, but I think that there deserves to be greater clarity in how we define what our removal priorities should be.

But I put them in several different buckets, including threats to border security, those who abuse the immigration enforcement system in some way.

Mr. MARINO. Here is the complex question that I get a great deal of the time when I am not only traveling in my district, but around the country concerning immigration.

What do we do with the children that are born here in this country that their parent or parents are here illegally and their parent or parents have a serious criminal record?

Secretary JOHNSON. That is a very good question.

Mr. MARINO. It is a conundrum. It really is.

Do you have any insight on that at this point? And I know that you have only been in your position for several months.

Secretary JOHNSON. I can't characterize every case. Hopefully, in that circumstance, there is a parent in this country who is in a position to care for his or her child.

Mr. MARINO. That does not have a serious criminal record?

Secretary JOHNSON. That does not have a serious criminal record.

Mr. MARINO. I am going to switch gears here a little bit to Guantanamo Bay.

You said that you think that we need to close that operation down, and you said we had some 130, -50—

Secretary JOHNSON. I think at this point there are less than 160.

Mr. MARINO. Still detained there.

Secretary JOHNSON. Yes.

Mr. MARINO. What do we do with those people?

Secretary JOHNSON. Well, they should either be prosecuted in our military commissions system.

Mr. MARINO. That we agree on.

Secretary JOHNSON. I was part of the reform effort in 2009—we had at one point been in discussions with the State of Illinois about a facility in Thomson, Illinois—or they should be transferred back to their home countries, consistent with suitable security arrangements.

But, you know, we are at a point where we are at the toughest cases. At one point, the population at Guantanamo was over 600, maybe close to 800. The easier cases have left. The harder cases are the ones that still remain.

And so, obviously, we have got to deal with this population at some point or another in one way or another, which could include possible continued Lawbore detention, as long as that legal authority still exists, at some alternative location.

But I believe that Guantanamo is a facility, for a variety of reasons, that should be closed at some point, including the cost to the taxpayer right now that it represents.

Mr. MARINO. Thank you.

And I yield back.

Mr. GOODLATTE. Chair thanks the gentleman and recognizes the gentleman from Rhode Island, Mr. Cicilline, for 5 minutes.

Mr. CICILLINE. Thank you, Mr. Chairman.

Thank you, Mr. Secretary, for being here.

I want to begin by saying that I think the suggestion that this Administration has not been properly enforcing the immigration law is almost laughable.

The United States today under this Administration spends more on immigration than all other Federal law enforcement agencies combined. There have been record removals.

This Administration has formally deported more people than any President in history. Record detentions. This Administration has detained more people than any President in history.

A record of prosecutions. Immigration offenses have now become the most prosecuted crimes in the Federal courts. And our borders are more secure than ever. Over the last 5 years, border incursions have decreased to levels not seen since the 1970's.

So this notion that somehow we can't do comprehensive immigration reform because this Administration can't be trusted to enforce immigration law is totally belied by the facts, and I think that the American people know that.

My first question really is the thing that concerns me tremendously is the large number of individuals who are being detained and deported each year who have committed no violation, other than those related to their undocumented status, people who have American citizen children, American citizen spouses, who have worked all the years that they have been here, and, frankly, people who would qualify for legal status under the bipartisan Senate-passed immigration bill and the House proposal H.R. 15.

And I hope, Mr. Secretary, that, as you assess where you will put your priorities for prosecution, that you will take into account that those individuals—many of them are, in fact, likely to be permitted to pursue legal status and it would seem that those shouldn't be priorities in terms of the prosecution as you evaluate what the priorities of the Department are.

And I would like to ask you now to move to a question about guns.

As you know, according to the GAO, a number of individuals that are on are terror watch list have legally purchased firearms in the United States in recent years.

And according to the most recent GAO study, individuals on the terror watch list tried to buy guns and explosives 1,453 times between February 2004 and December 2010.

On 1,321 occasions, 91 percent of those attempts, the FBI was not able to block gun and explosive sales to suspected terrorists.

So my first question is: Do you support legislation that would ensure that the Federal Government has the ability to block gun sales to those on the terror watch list?

And, secondly, some of my colleagues who have raised concerns about the accuracy of the terror watch list.

And I would like to hear from you as to whether or not there are efforts underway to update that list as compared to maybe the status of it 5 or 10 years ago when there was some concern about who was on it.

Secretary JOHNSON. Well, consistent with the position of this Administration, I support sensible gun control laws. I believe that

part of our mission in the Department of Homeland Security is to train, prevent, educate, with regard to mass shootings.

And we have done that, Secret Service, through our FEMA grants. We try to help communities better respond to mass shootings. And we obviously see far too many of these in this country.

And so, irrespective of motive, when a tragedy occurs that involves multiple deaths, whether it is a terrorist-motivated bomb plot or a mass shooting, the Department is prepared to do what we can to try to prevent these acts, to minimize the fallout from these acts, to provide grants to communities to better prepare for these acts by way of first responders and so forth. And so we do what we can.

Mr. CICILLINE. But, Mr. Secretary, what I am asking about is specifically a GAO study that showed that, in 91 percent of the occasions, the Federal Government—or the FBI was not able to block a gun or explosive purchase by an individual on the terror watch list.

My question is: Do you support legislation that would ensure that the Federal Government has the ability to block gun sales or explosives sales to individuals on the terror watch list?

Secretary JOHNSON. I would have to study the GAO report more specifically before I took a position.

Mr. CICILLINE. Okay, well, I would ask you and I look forward to working with you on this.

This is a very serious issue where individuals are placed on the terror watch list because they are dangerous and they have been identified as terrorists and they have the ability to go in and buy a gun or buy explosives. That is unimaginable to most Americans.

And so I urge you to read that report and look forward to working with you to make sure that we prevent such individuals from having access to firearms.

And, with that, I yield back, Mr. Chairman.

Secretary JOHNSON. Thank you.

Mr. GOODLATTE. Chair thanks the gentleman and recognizes the gentleman from North Carolina, Mr. Coble, for 5 minutes.

Mr. COBLE. Thank you, Mr. Chairman.

Mr. Secretary, good to have you on the Hill.

Mr. Secretary, in responding to a post-hearing question for the record following your confirmation hearing, you were asked whether you had any concerns with the current interior enforcement policies and efforts at ICE, and you stated—and I quote, “I have reached no conclusion at this point. But I anticipate that, if confirmed, I will become fully immersed in this issue.”

Several months have passed since that time, Mr. Secretary. Do you have any concerns with the current interior enforcement policies and efforts at ICE?

Secretary JOHNSON. Thank you for that question.

I have immersed myself in this issue to the extent I am able to do so in 5 months, and I have spent a lot of time talking to our ERO workforce.

One of the things that is apparent to me is our guidance for enforcement could use consolidation and added clarity. I am struck by the fact that our guidance exists in a whole series of written docu-

ments, memoranda, issued by ICE leadership dating back to 1976 all the way into 2012. It is a whole series of things.

And so, if one wanted to fully understand what our removal priorities are, what our enforcement policies are, you would have to look at a whole series of documents. There is no one place you could go to do that, and in many places I think it lacks clarity.

So I am interested in trying to build clarity and trying to consolidate all of this guidance, which would be a very huge project.

I also think that our removal workforce has some morale issues. I think they could use a pay raise. A lot of them are capped at GS-9 and are upset about the fact that they can't go any higher.

And I have talked to people in our workforce who are contemplating leaving ERO to go to a lower-paying job where they have greater pay opportunities, and I think that is unfortunate.

So, I mean, those are just two issues that occur to me. But I continue to learn more and more about interior enforcement all the time. But these are two issues that strike me in response to your question.

Mr. COBLE. I thank you, Mr. Secretary.

Mr. Secretary, George Washington University law professor, Professor Jonathan Turley, in fact, has appeared before our Committee several times. I am sure you know him——

Secretary JOHNSON. I do.

Mr. COBLE [continuing]. By name and reputation.

He told the House Judiciary Committee that, in abusing the concept of prosecutorial discretion—and I am quoting the professor now—“President Obama is nullifying part of the law that he simply disagrees with. It is difficult to discern any definition of the faithful execution of the laws that would include the blanket suspension or nullification of key provisions.” “If the President can claim sweeping discretion to suspend key Federal laws, the entire legislative process becomes little more than a pretense,” he said.

Do you agree with Professor Turley?

Secretary JOHNSON. Without seeing his entire testimony, I am inclined to agree with the passage that you read.

Mr. COBLE. And so am I.

Secretary JOHNSON. In terms of blanket exemption in the enforcement of the law, doesn't really look like an act of prosecutorial discretion.

And this is similar to the exchange I had with Congressman Gowdy. I think that there is a line that can be drawn between prosecutorial discretion and simply a blanket inability or unwillingness to enforce the law in its entirety. I don't think that is prosecutorial discretion.

Mr. COBLE. Well, when I said I agreed, I agreed with the fact that it appears little more than a pretense. That is what I meant when I said that I agreed with the professor.

I thank you for being here, sir.

And I yield back, Mr. Chairman.

Mr. GOODLATTE. Chair thanks the gentleman and recognizes the gentleman from New York, Mr. Jeffries, for 5 minutes.

Mr. JEFFRIES. Thank you, Mr. Chairman.

And thank you, Secretary Johnson, for your presence here today and for your service to the country.

And let me just state for the record I had the opportunity and the privilege to work under Mr. Johnson as a young attorney and am confident that the skill and ability that he has obviously has served the country well in his prior capacity and will continue to serve the country well as you move forward as our Homeland Security Secretary. So we are thankful—I am certainly thankful for that.

I wanted to ask a few questions about immigration and whether our system is broken and, if so, you know, how we might resolve it, based on some of the things that you mentioned in your oral as well as in your written testimony.

We have got about 11.4 million undocumented individuals in this country right now. Is that figure about correct?

Secretary JOHNSON. Yes. That is what I understand the estimate to be. I have seen 11.5, 11.4. Somewhere in there.

Mr. JEFFRIES. Now, what is the likelihood that these individuals in any significant number will self-deport?

Secretary JOHNSON. I think the likelihood is next to zero that they will all self-deport. I think we have to be realistic about that situation. They are not going away.

Mr. JEFFRIES. And what is the feasibility that we, as the United States Government, Homeland Security—any apparatus that we have available can engage in mass deportation of such a significant number?

Secretary JOHNSON. With any realistic—I mean, it can't be done. We have to accept the fact that we have 11.5 million undocumented immigrants in this country. We have deal with them. I don't think we should allow them to continue to exist in a state of legal ambiguity or in a dark hole.

I think, from my Homeland Security perspective, I would rather deal with this population, encourage them to be held accountable, encourage them to pay taxes, get on the books and get on an earned path to citizenship so that they go through the necessary background checks, they are in a position where they can work legally, and we reckon with this problem, which is why I am a strong supporter of immigration reform.

I think that we have to be realistic about the place we are in with respect to these 11.5 million people. There are States now where they are permitted to have driver's licenses. The California Supreme Court says that an undocumented immigrant in this country can practice law.

So they are not going away. They are not going to self-deport. I would rather see us reckon with this population than to continue in the state of legal ambiguity we are in right now.

Mr. JEFFRIES. Well, I certainly take that position. I think most reasonable people would conclude, obviously, based on the fact that self-deportation is impractical, unlikely to occur, and mass deportation is impractical in terms of any execution.

And we have 11.4 million-plus undocumented individuals. We need to deal with them appropriately. But we need to address that situation. So I appreciate those observations.

Now, you expressed concern earlier today and in your testimony that there has been a substantial increase in the number of unaccompanied minors who have been entering into this country.

And it is my understanding that that phenomenon really began to occur sometime in the fall of 2011 and we have seen a significant increase in and around that moment.

What are some of the factors, if any, that are leading to this substantial increase in those Central American countries that we have experienced?

Secretary JOHNSON. I think that phenomenon is driven largely by the circumstances in those countries—in those Central American countries, the levels of violence, the levels of poverty.

Because when you look at—when I see these children and ask at McAllen Station, “Where are you from?”, they tell us Honduras, El Salvador, Guatemala. And you just look at the situation in those countries and you have a readily available answer to your question.

And so I want to try to work with these governments to stem this tide and to see what we can do to add to their own border security and deal with some of the underlying problems that are causing this phenomenon. But I think the principal reason we are seeing this is because of what is happening in the source countries.

Mr. JEFFRIES. Well, what can we do proactively to address not just the underlying violence, which seems to be a problem, you know, as it relates to some of the drug cartels potentially being pushed out of Mexico into Honduras, Guatemala, El Salvador, in a manner that those countries weren’t prepared to address, creating a chaotic situation?

But, also, there appears to be an absence of any meaningful child protective system in those countries and then the absence of border security.

I mean, is there opportunity here for us through your leadership, through the leadership of others, for the United States, for Congress, to potentially get behind assisting our Central American countries to our southern border beyond Mexico in a manner that could alleviate what I think is a humanitarian crisis that we have to deal with for those who actually make it?

Secretary JOHNSON. I think, first of all, it requires a whole-of-government approach by our government, executive branch and Congress, DHS and other agencies of our government.

And this is something I have had conversations about with my cabinet counterparts, who all recognize and appreciate the problem. I think it requires a whole-of-government approach in homeland security, national security, and law enforcement.

And I think it requires an engagement with the Government of Mexico because this problem is also their problem. People who migrate from Central America to the United States migrate through Mexico, and many of them stop there.

And so I have had this conversation with the Government of Mexico about doing more. And I believe that there is a recognition of the problem in our partnership with that government, and I believe that there is a mood and a climate to address the problem.

I have had that conversation with the senior-most members of the Mexican Government, and I think that they want to help. And I think the—my sense is that we are in a position right now to make some progress with the Mexican Government on that issue.

Mr. JEFFRIES. Thank you.

My time is up. I yield back.

Mr. GOODLATTE. The time of the gentleman has expired.

And I want to say that I have had the same opportunity to speak with senior Mexican officials, who have said the same thing, which is a change in their attitude toward their southern border.

And any assistance the U.S. gives to them to help secure that border with Guatemala I think will pay dividends for both Mexico and the United States. So I would certainly encourage it.

The Chair recognizes the gentleman from Georgia, Mr. Collins, for 5 minutes.

Mr. COLLINS. Thank you, Mr. Chairman.

Mr. Secretary, I wasn't going here. But I have sat here and listened. I have some other questions I am going to get to.

But we just spoke of—and my good friend from New York brought this up—that there are 11.4, 11.5. I think there are some who think it is higher or lower. It doesn't really matter.

But these 11.4 million are—and we will use the word “undocumented”—they are not here in a lawful status. Correct?

Secretary JOHNSON. For the most part, that is correct.

Mr. COLLINS. No. No.

Are they here in a lawful status or not?

Secretary JOHNSON. For the most part, that is correct. I mean, some of them—

Mr. COLLINS. No. No. No.

Reclaiming my time, you can't have it both ways. If they are here in a legal status, then, they are not undocumented. They are here legally if they have some form of legal status.

When you say—and I think this is the problem of a political agenda or a want-to or a feeling. It is not legal ambiguity if you are here and we talk about a group of people that are undocumented and not here properly. That is not a legal ambiguity.

So it concerns me that we take this conversation—and, like I said, you have answered a lot of questions on both sides very concerned about that we can't define a secure border. That is a different issue. I will be submitting questions to you, for the record, on that.

But we would not be having this discussion in a large sense if these 11-point-whatever million were here and there was a legal ambiguity on their status here.

There is no legal ambiguity. One side wants to do it differently. There is another side, which we have taken steps in this Committee to work toward resolving this issue.

So I want to go to something else, but I just don't think it is being very honest with the Committee to say that there is legal ambiguity here. If there were, this would be a whole different discussion.

Secretary JOHNSON. Sir, there is—

Mr. COLLINS. But I do have a question.

Secretary JOHNSON. There is legal ambiguity in that they are here undocumented, but there are States that permit them to have driver's licenses. I consider that an ambiguous legal state, and we have to fix it. The system is broken.

We are not going to deport 11.5 million undocumented immigrants in this country. You and I both know that. We have to deal with these populations—

Mr. COLLINS. And have you heard——

Secretary JOHNSON [continuing]. One way or another.

Mr. COLLINS. Reclaiming my time, have you heard me say that? Have you heard me say that?

Secretary JOHNSON. We have to deal with the problem.

Mr. COLLINS. Have you heard me say that I would deport 11.4 million people?

Secretary JOHNSON. But We have to recognize——

Mr. COLLINS. Have you heard me——

Secretary JOHNSON [continuing]. They are not going away.

Mr. COLLINS [continuing]. Mr. Secretary—Mr. Secretary, I am not asking you to give a roundabout answer.

Have you heard Congressman Doug Collins say that we need to deport 11.4 million people?

Secretary JOHNSON. No, I have not.

Mr. COLLINS. Yes or no.

Secretary JOHNSON. No, I have not.

Mr. COLLINS. I want to move on to something else because we are obviously not going to see eye to eye on this point. Because I do believe there needs to be a fix. But if we can't even agree on the fact that there is not legal ambiguity here, there is a problem.

One of the things I do think we are making progress on is in the effort on border protection and, also, homeland security in dealing with IP issues and intellectual property issues coming across the border and patent-infringing goods making entry into the U.S.

This is something that is—the intellectual property aspect is very important to me and, also, to my State of Georgia.

Could you provide me with a brief update on the Border Patrol's efforts to develop processes which we can expect over the months to work on this issue of patent-infringing products coming across the border and areas that this is being discussed?

Secretary JOHNSON. I am happy to have that discussion and engage in a conversation with you or any other Member about border security.

Mr. COLLINS. Okay. I just asked the question.

The question is: Can you brief me on the updates of Border Patrol in dealing with patent-infringing products, other things dealing with the IP, intellectual property issues coming across our border? Just update me or give me an update if you can. If not, can you supply it in writing on issues that are going on?

Secretary JOHNSON. Yes, I can—I will. Yes.

Mr. COLLINS. Supply it in writing? Okay.

In February of this year, Director Kubiak testified on behalf of DHS in front of the House Energy and Commerce Subcommittee.

He stated in his written testimony that ICE is working closely with Border Patrol to adopt best practices to ensure their limited resources are focused on finding the most egregious violators as it relates to IP theft.

Is this correct?

Secretary JOHNSON. I believe so. Yes.

Mr. COLLINS. Could you share what some of the best practices are that are being adopted?

Secretary JOHNSON. I can do that in writing. Sure.

Mr. COLLINS. Okay. In looking further, I have also been concerned—and I will just sort of come back and just sort of finish up here—I have been concerned with the releases and the detentions. And we have discussed this. That has been discussed ad nauseum as far as the policy.

But I do have a question: Are you willing to provide me with identifying information regarding any criminal alien released in Georgia since 2012 so I can provide appropriate congressional oversight on behalf of the citizens of my district?

Secretary JOHNSON. I believe we are in a position to do that, and I will do that. Yes, sir.

Mr. COLLINS. Okay. You will provide that.

Again, Mr. Secretary, I do appreciate your work. I am very concerned with the answers especially to the first part of our discussion because some of these things are not legal ambiguities. They are things that need to be fixed. If they were not, then we would not be looking at it from the perspective we are. And that is why there is such conversation on this.

With that, Mr. Chairman—

Mr. GOODLATTE. Would will the gentleman yield?

Mr. COLLINS. It is yours, Mr. Chairman.

Mr. GOODLATTE. I would just add to your concern that the REAL ID Act, which deals with making sure that driver's licenses or other forms of identification help prevent the kind of tragedy that occurred on 9/11/2001—that act makes it very clear that a State conferring a driver's license on someone who is not lawfully present in the United States does not in any way confer a legal status on that individual whose presence is here.

Mr. COLLINS. Mr. Chairman, you are correct in that, and that is why there is still not legal ambiguity here. There is a problem with a law that provides something else.

Ms. LOFGREN. Will the gentleman yield?

Mr. COLLINS. It is the Chairman's time.

Mr. GOODLATTE. I will yield an additional minute to the gentleman from Georgia so he can yield to the gentlelady.

Mr. COLLINS. I yield to the gentlelady from California.

Ms. LOFGREN. I think that—and I appreciate the gentleman for yielding—that there are certainly instances—and I am sure Mr. Labrador has also run into this in his practice—where someone doesn't have documents, but they are, in fact, legally present in the United States. It is not all that rare, surprisingly enough. I would just add that into the mix.

Mr. COLLINS. And reclaiming my time—and I do agree with the gentlelady, who we agree on many different things—I think, in this instance, though—when you discuss 11.4 million, the implication was they are all here under legal ambiguity, and that is not the case.

Ms. LOFGREN. I am not suggesting that that is the case.

Mr. COLLINS. It muddies the water greatly on what we are doing here.

Mr. Chairman, I yield back.

Mr. GOODLATTE. Chair thanks the gentleman and recognizes the very patient gentleman from Idaho, Mr. Labrador, for his questions.

Mr. LABRADOR. Thank you, Mr. Chairman.

Thank you, Mr. Secretary, for being here with us today. I want to start out with something good because we are going to get to some issues that we are going to disagree on.

But I actually really admire your answers to Mr. Deutch. I don't know if you remember the exchange that you had just a few minutes ago—or about an hour ago about the number of beds. I want to make sure that your answer is really clear.

There is nothing in the law that is mandating you to put 34,000 people on these beds. Is that correct?

Secretary JOHNSON. I do not read the law that way. It doesn't read that way.

Mr. LABRADOR. It doesn't read that way. And I keep hearing that—

Secretary JOHNSON. It says "beds," not "people."

Mr. LABRADOR. That is the way I read it as well. And I commend you for your answer. I was actually a little bit confused, thinking that maybe that was the interpretation of the Administration. And I appreciate that you clarified that. I don't read the law that way either.

Now, I do believe that a critical part of immigration reform is a robust ag and non-ag guest worker program. Do you agree that such a program is important?

Secretary JOHNSON. Yes.

Mr. LABRADOR. I think that the evidence, at least in my mind, is pretty clear that a guest worker program can end illegal immigration. For example, the Bracero program did it in the 1960's, in my opinion.

The Congressional Research Service found that the Bracero program only worked when combined with greatly increased law enforcement efforts.

So here is the problem. Employers in my district are telling me that legal workers, people who are actually coming to the United States legally, are absconding to work in the black market and they are being told that they won't be removed from the United States by ICE agents or others.

Do you agree that ICE's priorities are maybe undermining one of our legal programs that is actually meant to deter illegal immigration?

Secretary JOHNSON. That sounds like a problem. Yes.

Mr. LABRADOR. We are hearing again and again in our district that people are leaving, for example, the sheep herding program and moving on to other industries and that the ICE agents don't have the resources—or are being told not to pick up these people, and I am very concerned about that.

Now, your testimony also indicated that there is no way that illegal aliens will depart. In fact, you just stated a few minutes ago that the likelihood is nearly zero.

And let me tell you that I disagree with you vehemently. In fact, my experience is totally different. So my actual experience as an immigration lawyer has been totally different than what your testimony is today.

In my experience, many did leave prior to the bars banning illegal aliens from returning for a decade or more. You are obviously

familiar with the 3- and 10-year bars and the permanent bars. Is that correct, Mr. Secretary?

Secretary JOHNSON. Familiar with what? I am sorry.

Mr. LABRADOR. Are you familiar with the bars that are in the law right now where, if you are here illegally in the United States, you must return to your home country before you can return to the United States legally?

Secretary JOHNSON. Yes. Yes.

To be clear, what I said—Congressman Jeffries asked me what is the likelihood that those 11.5 million people will all self-deport, and I said the likelihood of that happening with regard to 11.5 million people is near zero.

Mr. LABRADOR. That is what I want to clarify.

Secretary JOHNSON. Do people self-deport? Yes.

Mr. LABRADOR. And people will do it—

Secretary JOHNSON. Individually self-deport. Yes.

Mr. LABRADOR [continuing]. If we have the incentives in the law. Do you agree with that?

Secretary JOHNSON. I agree that there should be disincentives to engage in illegal migration.

Mr. LABRADOR. Correct.

So if, for example, we remove the 3- and 10-year bars, if we repeal those bars that are in the law, don't you think many people would depart and, in essence, self-deport so they can reapply legally to the United States?

Secretary JOHNSON. I do not have any empirical evidence one way or another to be able to answer that question.

Mr. LABRADOR. Well, you should look into that. Because I actually did that with many of my clients when I was an immigration lawyer.

And even when the bars were in place, if there was a high likelihood that they could return even in spite of the bars, they would actually go back to their home country and return to the United States.

Don't you think it would be positive if we actually—

Secretary JOHNSON. Intuition says, if there is a shorter period of time that you have to go back and then wait, you are more likely to go back. Intuition says that.

Mr. LABRADOR. So right now the waiting period is 3 to 10 years. Well, actually, if we removed those bars and they know that they can return legally—for example, a U.S. citizen spouse knows that they can go back to their home country and they can return legally within a matter of months instead of 3 to 10 years—don't you think they would probably more likely be willing to do that?

Secretary JOHNSON. Intuition says that, if the wait period is shorter—people are more likely to go back if the wait period is shorter.

Mr. LABRADOR. So don't you think that would be a good first step for us to actually start with something like that, where we could actually make a small change in the law and encourage a lot of people?

In my estimation and others, it is about 25 percent of the people that are here illegally who currently qualify for some legal status but for the bars.

Don't you think that would be a good first step for us to try?

Secretary JOHNSON. Well, it is hard to comment on that proposal in isolation to the exclusion of everything else that is in the works in comprehensive immigration reform.

Mr. LABRADOR. So you would rather have nothing than at least have one area where we can fix the status of people that are here illegally by having them go back to their home country and return in a legal status?

Secretary JOHNSON. There are many things about our immigration system that needs to be fixed that I hope this Congress will act on.

Mr. LABRADOR. And you don't want to fix one of them? You want an all-or-nothing approach?

Secretary JOHNSON. I think that we have an opportunity on a comprehensive basis, either in one bill or several bills, to fix a whole multitude of problems that I think every Member of this Committee realizes exists.

Mr. LABRADOR. So your answer is, if we don't do it comprehensively, then we should fix nothing about the current system?

Secretary JOHNSON. I won't be categorical in that way. I am saying that I would encourage the Congress to think about immigration reform in a whole variety of areas.

Mr. LABRADOR. We can do that, and I agree with you.

But if we can fix something today, if tomorrow we could get something passed that gets rid of the bars so we can help a group of people that are here illegally return legally after they return to their home country, you would be opposed to that?

Secretary JOHNSON. Sir, I would encourage you to think about the whole range of—

Mr. LABRADOR. So you don't want to answer that question? Again, your answer is you want all or nothing? That is what you are saying?

Secretary JOHNSON. No. I didn't say that. I am encouraging the Congress to think about a comprehensive solution to this problem.

Ms. LOFGREN. Will the gentleman yield? If I may.

Mr. GOODLATTE. The gentlewoman will suspend. The gentleman's time has expired, but the Chair would recognize the gentleman for an additional minute so he can yield to the gentlewoman.

Ms. LOFGREN. I just note that, really, it is up to the Congress to decide what to legislate and the Secretary doesn't get to decide.

Mr. LABRADOR. And I yield back—and I reclaim my time. And I agree with that.

But the position of this Administration, as has been demonstrated by the Secretary and as has been demonstrated by a lot of the comments that have been made by the other side and by the President, is that they want an all-or-nothing approach.

And I think that is rather unfortunate because we could actually fix—

Ms. LOFGREN. I don't think that is what the Secretary said.

Mr. LABRADOR. We could actually fix—

Secretary JOHNSON. For the record, I have not said that. Let me make myself clear.

Mr. LABRADOR. But you won't answer the question.

Secretary JOHNSON. I have not said that.

Mr. LABRADOR. You won't answer the question if it would be okay for us to actually fix one portion of the immigration system that I think is actually preventing people from returning to their home country and coming back legally.

Ms. LOFGREN. If would gentleman would further yield, I would encourage him to bring that and many other items up to the floor for a vote.

Mr. LABRADOR. We will.

Mr. GOODLATTE. The Chair thanks the gentleman.

And the Chair especially thanks the Secretary. You have been very generous with your time. And I believe, by my count, you have taken questions from 32 of the 39 Members of this Committee.

And we know that there were some questions asked that you were not prepared to answer and want to do some research on.

And if you would respond to those questions in writing as well as to any other questions that Members of the Committee may propound to you in writing, we would very much welcome that.

I also want to take note of one other issue that was raised by the gentleman from Georgia and the gentlewoman from California and thank you for this, and that is with regard to the REAL ID.

As you know, the REAL ID Act allows States to issue driver's licenses to illegal immigrants as long as the licenses are REAL ID-compliant, something, by the way, that I am not in favor of having States issue licenses to people who are not lawfully here.

But be that as it may, REAL ID-compliant means that they clearly note that the driver's license cannot be used for Federal purposes and that they have markings that clearly make it different from regular driver's licenses.

At the beginning of May, your Department rejected California's illegal immigrant license design pursuant to the REAL ID, and I thank you for that. I think it was the absolutely correct decision.

That decision was made because it did not have markings that made it clearly different from normal licenses. That was a great decision. And I want you to know that there are a number of Members of Congress who support that decision and thank you for having made it.

Secretary JOHNSON. Doing my best to comply with the law, Congressman.

Mr. GOODLATTE. Thank you, Mr. Secretary.

This concludes today's hearing.

We thank the Secretary for joining us.

Without objection, all Members will have 5 legislative days to submit additional written questions for the witness or additional materials for the record.

And, with that, the hearing is adjourned.

[Whereupon, at 3:03 p.m., the Committee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

**Questions for the Record submitted to the Honorable Jeh C. Johnson,
Secretary, United States Department of Homeland Security***

BOB GOODLATTE, Virginia
Chairman

F. JAMES BRUBAKER, Jr., Missouri
HOWARD COBLE, North Carolina
LAMAR SMITH, Texas
STEVE CLARKE, Ohio
SPENCER BACCHUS, Oregon
DANIEL L. RIFE, California
J. AMBROSE SIMMONS, Virginia
STEVE KING, Iowa
TERRY ADAMS, Kansas
LUKE GOMMERT, Texas
JULY ANNE GOSAR, Ohio
TERRY LEE, Texas
JASON CHAFFETZ, Utah
TOM MARINO, Pennsylvania
TROY GUNDY, South Carolina
BILLY L. LARSEN, Idaho
BLAKE SHERIDAN, Oregon
GEORGE HOLDING, North Carolina
DOUG COLLINS, Georgia
RON DELANO, Florida
JASON SMITH, Missouri
VACANCY

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July 1, 2014

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Ranking Member

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TODD CHRISTENSEN, California
MICHAEL JACKSON, IL, Texas
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TED DEUTCH, Florida
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KAREN BASSEL, California
CHUCK L. SCHUMER, New York
GREGG R. CLARK, Pennsylvania
JOE MANCH, Florida
MAURICE H. JEFFERSON, New York
DAVID COLLINS, Rhode Island

The Honorable Jeh Johnson
Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Johnson,


The Judiciary Committee held a hearing on "Oversight of the United States Department of Homeland Security" on Thursday, May 29, 2014 in room 2141 of the Rayburn House Office Building. Thank you for your testimony.

Questions for the record have been submitted to the Committee within five legislative days of the hearing. The questions addressed to you are attached. We will appreciate a full and complete response as they will be included in the official hearing record.

Please submit your written answers by Tuesday, August 12, 2014 to Kelsey Deterding at kelsey.deterding@mail.house.gov or 2138 Rayburn House Office Building, Washington, DC, 20515. If you have any further questions or concerns, please contact or at 202-225-3951.

Thank you again for your participation in the hearing.

Sincerely,


Bob Goodlatte
Chairman

Enclosure

*The Committee had not received a response to these questions at the time this hearing record was finalized and submitted for printing on August 14, 2014.

The Honorable Jeh Johnson
July 1, 2014
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QUESTIONS FOR THE RECORD FROM REPRESENTATIVE CHAFFETZ:

Secretary Johnson, during our exchange at the oversight hearing of the Department of Homeland Security on May 29, 2014 you indicated that your Department maintains an analysis of border security.

I would greatly appreciate a briefing for me and my staff on the analysis you discussed at the hearing. In addition, please provide me with the most recent copy of this analysis and any other details of how levels of security are measured by the Department and its components along the U.S. border with Mexico and Canada.

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QUESTIONS FOR THE RECORD FROM REPRESENTATIVE DEUTCH:

1. In May 2012, President Obama directed that all Executive agencies and departments publish their own Prison Rape Elimination Act (PREA) rules. On March 7, 2014, the Department of Homeland Security (DHS) published a final PREA rule. This rule would require PREA protections for private contract companies operating immigration detention facilities when there are "new contracts, contract renewals or substantive contract modifications." Under this language, PREA may not apply to existing contracts between DHS and private detention companies.
 - Is DHS planning to renegotiate existing contracts with private detention companies to ensure that PREA applies with equal force to jails and private detention facilities holding immigrants?
 - How will DHS treat the contracts with private companies operating detention facilities that automatically renew upon their expiration? Will these contracts be renegotiated?
 - Under the rule, could the absence of PREA protections in an existing contract with a private detention facility qualify as a "substantive contract modification" to permit the DHS to renegotiate the terms of a contract to include PREA protections?
 - Will DHS exercise oversight of private contract facilities to ensure that the facilities are adhering to PREA protections?
 - Describe any such oversight process. Will there be a complaint system in place for detainees? Does the DHS have adequate resources to ensure that private contract facilities will be in compliance with PREA protections?
 - Will the DHS oversee the enforcement of PREA protections for private contract facilities that have not yet had their contracts renegotiated to include PREA protection provisions?
2. In 2014, Miami International Airport (MIA) will receive one million more passengers than last year, and it will welcome six new international airlines. The FIFA World Cup will bring an estimated 50,000 additional passengers through MIA in a one month timeframe starting in June. The current wait time for international passengers arriving in MIA can often be more than 3 hours to clear Customs and Border Patrol (CBP). Seventy percent to eighty-five percent of the international arrivals at MIA are non-US citizens who take longer to process, cannot utilize technologies designed to expedite CBP processing, and are often subject to lengthy baggage control screenings.
 - What steps will the DHS take to permanently address this situation to prevent MIA from losing international passengers?
 - In the short term, are there any steps that the DHS is taking or can take to address the CBP wait times at MIA?

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- Would the DHS support revisiting CBP's staffing model needs for MIA to determine adequate staffing numbers?

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QUESTIONS FOR THE RECORD FROM REPRESENTATIVE GARCIA:

CBP is currently facing a significant shortage of workers at Miami International Airport and international passengers arriving at MIA face the worst wait time of all major US gateways. The airport is expected to receive one million more passengers this year than last, with an additional 50 thousand coming through in one month alone as a result of the World Cup.

Have any actions been taken to address this situation in the short-term during the World Cup and permanently so that MIA does not lose the traffic that is vital to the local economy? Would you consider revisiting CBP's staffing models to better factor in Miami's unique issues when determining staffing levels?

